TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 100

CHARLEY WEEMS AND CLARENCE NORRIS,
PETITIONERS,

vs.

STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED MAY 23, 1932

CERTIORARI GRANTED MAY 31, 1932

(36,797)

( )

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INDEX

	Original	Print
Record from circuit court of Jackson County	1	1
Caption (omitted in printing)	1	
Indictment	1	1
Writ of arrest	1	2
Judgment entry	2	2
Bill of exceptions	3	3
Caption	3	3
Petition for change of venue	3	4
Exhibit "A"—Excerpt from newspaper	4	5
Exhibit "B"—Excerpts from newspapers	8	9
Testimony of M. L. Wann	15	18
Testimony of Joe Starnes	16	20
Order overruling petition for change of venue	18	22
Testimony of Victoria Price	18	22
Dr. R. R. Bridges	27	33
Dr. M. H. Lynch	31	37
Tom T. Rousseau	32	38
Jim Broadway	34	41
Ruby Bates	35	42
T. L. Dobbins	42	50
Lee Allen	43	50
Charley Weems	43	51
Clarence Norris	46	55

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 18, 1932

	Original	Print
Testimony of Arthur Woodall	50	58
Victoria Price (recalled)	50	59
Charge to jury	51	60
Motion for new trial	54	63
Amended motion for new trial	55	64
Exhibit—Excerpt from trial record	59	69
Petition of Claude Patterson et al	62	72
Affidavit of Haywood Patterson et al	67	77
Exhibit 1—Excerpt from trial record	73	85
Affidavit of Roberta Fearn	87	99
Bertha Lowe	88	100
Willie Crutcher	89	101
Allen Crutcher	90	102
Henry Cokley et al	91	103
Percy Hicks	92	105
Second amended motion for new trial	94	106
Testimony of T. G. Elkins	100	113
W. G. Sartin	102	115
L. R. Jones	103	117
J. M. Barnes	103	118
Willie J. Wells	104	118
Richard Hill	105	119
Roy Wilbourne	105	120
W. C. Scogin	106	120
B. M. Holloway	107	122
C. C. Allen	108	123
Lee Hicks	109	124
Luther Ballard	109	125
John Benson	110	125
Affidavit of T. B. Reynolds et al	111	127
L. L. Maynor	112	129
Clarence Norris	113	130
P. W. Campbell	118	135
M. L. Wann	120	137
M. C. Thomas	122	139
Charles F. Simmons	123	140
Houston Dicus et al	124	142
Order settling bill of exceptions	126	144
Certificate of appeal	126	144
Proceedings in supreme court of Alabama	127	145
Order for writ of certiorari	127	145
Writ of certiorari	129	146
Return to writ of certiorari	130	147
Argument and submission	134	151
Judgment	135	151
Opinion, Thomas, J	136	152
Petition for rehearing	153	164
Order overruling petition for rehearing	162	171
Petition for stay of execution	163	171
Order staying execution	168	175
Præcipe for transcript of record	170	176
Clerk's certificate	(omitted in printing)	171
Order allowing certiorari		179

[fol. 1] [Caption omitted]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS

INDICTMENT—Filed March 31, 1931

THE STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT, SPECIAL MARCH TERM, 1931

The Grand Jury of said County charge that before the finding of this Indictment, Haywood Patterson, Eugene Williams, Charlie Weems, alias Charles Weems, Roy Wright, alias Ray Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, alias Clarence Morris, whose names to the Grand Jury are otherwise unknown than as stated, forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama.

H. G. Bailey, Solicitor for Ninth Judicial Circuit.

Circuit Court, Special March Term, 1931. The State vs. Haywood Patterson, et als. Indictment. Rape. No Prosecutor. Witnesses: Ruby Bates, Victoria Price, Arvell Gilly, Dr. R. R. Bridges, Dr. Linch, C. M. Latham, C. S. Broadway, C. F. Simmons, Tom Taylor Rousseau, Jim Broadway. A true bill. J. N. Ragsdale, Foreman Grand Jury.

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

WRIT OF ARREST

STATE OF ALABAMA,
Jackson County:

CIRCUIT COURT

To any sheriff of the State of Alabama, Greeting:

An indictment having been found against Haywood Patterson et als., at the Special Session, 1931, of the Circuit Court of Jackson County, for the offense of Rape.

You are therefore commanded forthwith to arrest the said Haywood Patterson, et als., and commit them to jail, unless they give bail to answer such indictment at the said Circuit [fol. 2] Court of Jackson County, in the sum of — Dollars.

Witness my hand this 31 day of Mar., 1931.

C. A. Wann, Clerk.

Executed by arresting the within named defendants and committing them to jail. March 31, 1931.

M. L. Wann, Sheriff.

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE

vs.

HAYWOOD PATTERSON et als.

JUDGMENT ENTRY

April 6, 1931, Comes H. G. Bailey, Solicitor, who prosecutes for the State of Alabama, in this behalf and also came Charlie Weems and Clarence Norris, indicted with Haywood Patterson, et als., and the said Charlie Weems and Clarence Norris demands a severance in this case and the same is granted and the defendants in open Court and by their attorneys of record file a motion for a change of venue and the same is overruled and the defendants except.

April 6, 1931, the said defendants being duly arraigned by having the indictment read over to them and for their plea thereto say they are not guilty: Issues then being joined there came a jury of good and lawful men, to-wit: John N. Coffey and eleven others who being empanneled and sworn, according to law, upon their oaths do say:

"We, the jury, find the defendants guilty as charged in the indictment and fix their punishment at death.

(Signed) John N. Coffey, Foreman.

And the said defendants the said Charlie Weems and Clarence Norris, being in open Court on the 9th day of April, 1931, and being asked by the Court if they had anything to say why the sentence of the law should not now be pronounced upon them, each of them separately and the said defendants say nothing. It is therefore considered by the Court and it is the judgment of the Court and the sentence of the law that the said defendants the said Charlie Weems and Clarence Norris be sentenced to death by electrocution at Kilby Prison in the City of Montgomery, Montgomery County, Alabama, on Friday the 10th day of July, 1931. Defendants appeal to Supreme Court and sentence suspended pending said appeal.

April 18, 1931, the Clerk of this Court did write death warrants for the said Charlie Weems and Clarence Norris and the same directed to the Warden of Kilby Prison commanding him to fail not in executing the said sentence and make his return as to how and when he executed the same.

[fol. 3] IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

THE STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS

Bill of Exceptions—Filed Nov. 30, 1931

CAPTION

Be it remembered that upon the trial of the foregoing styled cause, in the Circuit Court of the Ninth Judicial Circuit of Alabama, beginning on, to-wit: the 6th day of April, 1931, present and presiding the Honorable A. E. Hawkins,

Judge of said Court, the following proceedings not otherwise appearing of record, were had, to-wit:

On said 6th day of April, 1931, the defendants Charley Weems and Clarence Norris, filed in said cause their petition for a change of venue, said petition being also signed by other defendants, and a severance as to the defendants in this cause, to-wit: Charley Weems and Clarence Norris, was granted upon motion of the State. Said petition for change of venue is in words and figures as follows, to-wit:

PETITION FOR CHANGE OF VENUE

To the Hon. A. E. Hawkins, Judge of the 9th Judicial Circuit Court:

Your petitioners, the undersigned, who are defendants in a cause now pending in said court, charged with the offense of rape, respectfully represents that they nor either of them can have a fair and impartial trial in this county; that the newspapers published in this county have so persistently tried the cause asserting the guilt of the defendants in such terms of these defendants, as to inflame the public mind to the extent that the Sheriff of said county had the Governor of this state to call out the National Guards to protect the lives of your petitioners. That after the arrival of said troops, hundreds of people gathered about the jail, where they were confined, apparently in threatening manner. That from the inflam-atory statements contained in said newspapers which are circulated all over this county, the minds of the public is such that your petitioners could not have a fair and impartial trial. A copy of which publication- are hereto attached, marked Exhibit- "A" and "B" and made part of this petition. That the public generally have already convicted them. Wherefore, petitioners prays your Honor to make an order removing this trial to some other county and the defendants hereby make oath that all the foregoing statements are true.

[fol. 4] Ozie (his X mark) Powell. Haywood (his X mark) Patterson. Eugene (his X mark) Williams. Charlie (his X mark) Weems. Roy (his X mark) Wright. Willie (his X mark) Roberson. Andy (his X mark) Wright. Alen (his X mark) Montgomery. Clarence (his X mark) Norris.

Sworn to and subscribed before me this the 6 day of April, 1931.

C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

Said Exhibit "A", attached to said petition, is in words and figures as follows:

EXHIBIT "A"

Jackson County Sentinel

Scottsboro, Ala., March 26, 1931.

Nine negro men rape two white girls, charge.

Threw white boys from freight train and held white girls prisoners until captured by posse.

All negroes positively identified by girls and one white boy who was held prisoner with pistol and knives while nine black fiends committed revolting crime.

National — called here and escorts prisoners to Gadsden for safe keeping until Tuesday.

Two girls and seven white boys were attacked by negroes as freight train left Stevenson; girls from Huntsville.

Case has no parallel in crime history. Assault took place in mid afternoon as freight train sped through this county. [fol. 5] Special term of Grand Jury and court called for next Monday and April 6th.

This afternoon (Thursday) eleven National Guard officers and seventy Guardsmen are on their way to Gadsden, Alabama, escorting nine negro men to jail at that city for safe keeping. Every one of the nine blacks is charged with raping one or both of two white girls they held prisoners on a fast through freight train as it was passing through Jackson County Wednesday afternoon between noon and three o'clock after they had attacked and thrown from the train six white boys and held one white boy a prisoner with pistol and knives.

The negroes have all been positively identified by the two girls and all of the white boys, all of whom are now

in Scottsboro to await the convening of the Jackson County grand jury called for special term next Monday, March 30th, to investigate the case.

The girls were Victoria Price and Ruby Bates, who gave their ages as 17 and 19 years, and gave Huntsville as their home. They stated that they had been in Chattanooga looking for work and were broke and decided to hobo back home with the white boy companions. Both girls were garbed in overalls.

The names of the white boys were John Gleason, John Ferguson, Roy Thurman, Lindsay and Odell Gladwell, Lester Carter and Orville Gilley. All of these white men gave addresses in other states except Gilley, who stated his home was at Albertville in Marshall County. Gilley was the one held prisoner by the negroes and is an eye witness to every assault.

The negroes, as hard looking lot as ever marched into jail here, gave their names as Ozey Powell, Chas. Weems, Clarence Morris of Atlanta, Olen Montgomery of Monroe, Ga., and Roy and Andy Wright, Eugene Williams, Haywood Patterson of Chattanooga, and Willie Roberson of Columbus, Ga.

These last four negroes were identified by Chattanooga police as being "the worst young negroes in Chattanooga" and all of them have bad police records in that city.

Negroes Accuse Each Other

This morning one of the younger negroes was taken out by himself and he confessed to the whole matter but said "the others did it." He was taken back to point out the guilty ones and the negroes immediately began accusing each other of the crime.

Surprise Attack Overpowered Whites

According to the general story told by both the girls and [fol. 6] white boys, the two girls and seven white boys — in a gondola car (or coal car) which had about two feet of gravel in the bottom of it. They were beating their way to Huntsville from Chattanooga. When the fast freight pulled away from the coal chute west of Stevenson, the nine negroes and maybe one or two more jumped down in

the car and attacked them, the negroes showing a pistol and knives. Several of the smaller white boys were bodily thrown over the gondola sides and the fight was soon left to only three or four white men and they fought until one by one of the black brutes overpowered them and threw them over the side of the car. One white boy, Orville Gilley, was struck over the head with a pistol and left in the corner for dead, but he roused up and found a knife held at his throat by two negroes who told him they intended to kill him. While some of the negroes held the two white girls, others of the fiends raped them, holding knives at their throats and beating them when they struggled.

Splendid Capture by Deputy and Posse

The first white boy thrown from the train struggled his way back to Stevenson and gave the alarm but the freight had already passed Scottsboro and word was flashed to Paint Rock, where Deputy Sheriff Latham of Trenton, who happened to be in Paint Rock, quickly formed a big posse of heavily armed citizens and they lined up on both sides of the railroad and stopped the train and got every negro brute as he dropped from the cars. The white girls were found in the car in a terrible condition mentally and physically after their unspeakable experience at the hands of the black brutes. They were hurried to Scottsboro and given medical attention.

The negroes were lined up at Paint Rock and Sheriff Wann and the posse brought all nine of them to Scottsboro where they were identified by the two girls and all of the white boys.

A great crowd gathered at the jail and it was thought that the prisoners were being carried to Huntsville for safe keeping, but the Sheriff changed his mind. Mayor Snodgrass and other local leaders addressed the threatening crowd and plead for peace and to let the law take its course and after an hour or two the crowd dispersed and all was quiet.

As a precautionary measure Governor Miller had been asked to send troops to Scottsboro and Major Joe Starnes of Guntersville, with ten other officers, commanding Alabama National Guard Companies E, F, G, arrived here

within less than three hours' notice from the time his men [fol. 7] were called, establishing a splendid record for the Guard as to ability to "get there when called." However, all was quiet, the soldiers relieving the Sheriff and many of his deputies who had been on watch throughout the night.

Today it was decided to send the negroes to Gadsden and the National Guard will escort them to that city, also escort them back to Scottsboro for arraignment and trial.

Some of the white boys thrown from the train were badly beaten up and bruised and were given attention by local doctors.

Case Without Parallel in County

This crime, the news of which was flashed around the whole county as a "first" Associated Press story, stands without parallel in crime history. Nine Negroes charged with rape, all of them being seen by three white eye-witnesses in open daylight, and this heinous attack following an assault and attempt to murder on the seven white boys who tried to protect the girls.

Calm thinking citizens last night realized that while this was the most atrocious crime charged in this county, that the evidence against the negroes was so conclusive as to be almost perfect and that the ends of justice could be best served by legal process. The citizens and officers are also commending the citizens of Paint Rock for their splendid and courageous stand in helping uphold the law at a most trying time.

Special Term of Court Called for April 6th

Circuit Judge Alf E. Hawkins and Solicitor Bailey arrived in Scottsboro Thursday morning and immediately went in conference regarding a special term of the grand jury and circuit court.

The grand jury was summoned to reconvene next Monday, March 30th, and the Circuit Court to reconvene the Monday following, April 6th. County Court has been postponed to the first Monday in May.

All members of the present grand jury are given notice to please be at the court house next Monday morning, the convening of the jury at about 10 o'clock.

This jury consists of J. N. Ragsdale, foreman, Charles Morgan, James H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J M. Tidwell, A. E. Chambliss, John G. Hicks, Robert E. Hall, Raymond Hodges, C. D. Paul, Walter Berry.

According to legal procedure in a case of this grave nature it is necessary to allow certain time to elapse for legal procedure between the indictment and trial. Many citizens had hoped to get a speedier trial even than this date set, but under the law it is properly set and we feel sure that Jackson County people will accept this verdict [fol. 8] and be a part in keeping peace in this time when it is hard to be law-abiding.

Judge Hawkins and Solicitor Bailey have secured Judge Speake and Solicitor Pride of Madison County to hold their court at Guntersville week after next in order that they might give this early trial to these negroes.

Said Exhibit "B," attached to said petition, is in words and figures as follows, to-wit:

EXHIBIT "B"

Jackson County Sentinel

Scottsboro, Ala., April 2, 1931.

Negroes Indicted on Charge of Rape

Grand jury finds 20 indictments against blacks charged with rape of two white girls on train.

Negroes plead not guilty to most serious charges in legal history of this county.

Trial set for next Monday at Scottsboro; 100 jurors summoned to try case; troops form constant guard to alleged rapists.

Surrounded by a cordon of soldiers bristling with automatic rifles, pistols and riot guns, nine negro men stood up in the Jackson County court house last Tuesday morning and were indicted on the most serious charges known on the

statute books of Alabama, rape. The negroes were Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris, all of whom pled not guilty to the charges of having raped Victoria Price and Ruby Bates, two white girls.

Twenty Indictments Against Negroes

The Jackson County Grand Jury went into session last Monday morning investigating the case and Tuesday morning reported twenty indictments for rape against nine negroes. There were nine individual indictments against the negroes for the alleged rape of Victoria Price, nine against them for the alleged rape of Ruby Bates, and two indictments against the whole nine negroes collectively for the alleged rape of both Victoria Price and Ruby Bates. This placed three indictments against each negro for the al- [fol. 9] leged crime of Wednesday of last week when it is said these negroes attacked the two white girls after overpowering or throwing from a moving freight train seven white boys who were in the same car with the two white girls.

The grand jury, under the direction of Solicitor Bailey, and County Solicitor Thompson, called before it a number of witnesses, including the two girls, Victoria Price and Ruby Bates, whose homes are in Huntsville, the boys who were with them and thrown from the train, the boy who was held prisoner and alleged to have witnessed the entire assault, the doctors, several officers and others who had information on the case.

No Disorder at Arraignment

The negroes were brought to Scottsboro from the Gadsden jail where they had been carried Thursday of last week. They had an escort and guard to and in Scottsboro of Sheriff Wann and deputies and Major Joe Starnes of Guntersville in command of 25 picked soldiers from the Alabama National Guard. These soldiers were armed with automatic rifles, riot guns and pistols and kept order in the court room and kept "crowding" at a minimum. A great crowd of people was present or tried to get into the court room. However, the general temper of the public seems to

be that the negroes will be given a fair and lawful trial in the courts and that the ends of justice can be met best in this manner, although these cases charged against the negroes appears to be the most revolting in the criminal records of our state, and certainly of our county.

Defense Lawyers Appointed

A Chattanooga lawyer, a Mr. Broddy, was at the court Tuesday, he said, "to investigate the case of the negroes for interested parties in Chattanooga, but said he at that time had not been employed as counsel to defend them at the trial. Judge Hawkins appointed the entire Scottsboro bar not otherwise excluded from the case, to act as temporary attorneys for negroes or active counsel for them if it appeared they would have no other counsel. Mr. Broddy also agreed to be listed as a temporary attorney for the defense. So at this time it is not known positively just who will defend the negroes and there may be outside legal talent from several places.

It is understood that the Scottsboro law firm of Proctor and Snodgrass has been retained to assist in the prosecution of the negroes.

Trial Set for Next Monday

The trial of the negroes is set for next Monday, April 6th, [fol. 10] in the special term of Jackson County Circuit Court. Judge Hawkins has drawn 100 regular and special jurors to appear for service. The list of jurors appears on this page of the Sentinel.

We are informed the State will make effort to try all the negroes at the same time under one indictment. If this is accomplished the matter will be made brief. If it becomes necessary to try each defendant separately it will take hundreds of jurors and many days court time.

100 Guards Here Next Monday

Major Starnes Will Command Picked Troops at Trial Next Monday.

Major Joe Starnes of the Alabama National Guard stated to the Sentinel Monday that he expected to bring at least

one hundred picked men for escort and guard duty to Scottsboro on next Monday when the nine negroes charged with rape on two white girls are brought here from Gadsden to be tried in the Jackson County Circuit Court.

The units coming here will be from Guntersville, Albertville and Gadsden and will be officered by about eleven men. These troops will remain here during the duration of the trial at least.

Major Starnes and his men made a record answer to the emergency call that was sent to them last Wednesday night by the Governor of Alabama, arriving in full military equipment at the Scottsboro jail in less than three hours from the time the Major got orders to come to Scottsboro. It was in the night and his men had to be notified at their homes in many parts of Marshall and Etawah counties.

Jurors Drawn for Special Term of Court

The following is a list of regular jurors drawn to appear next Monday morning for service at the special term of Jackson County Circuit Court which will try the nine negroes indicted for rape:

A. H. Hill, Bridgeport, Lem. R. Jones, Bridgeport, Geo. R. Joyner, Bridgeport, J. M. Barnes, Bridgeport, Luther Hart, Bridgeport, L. M. White, Bridgeport, W. C. Lindsay, Stevenson, Luther Ballard, Stevenson, John St. Clair, Stevenson, John N. Coffey, Stevenson, Virgil Knight, Stevenson, Horace McCrary, Stevenson, A. L. Akins, Stevenson, G. C. Reeves, Bryant, James Walker, Fackler, Clay Shrader, Fackler, Albert Rash, Rash, James D. Allen, Rash, Lee Hicks, Olalee, Ed. Matthews, Olalee, Arthur Gamble, [fol. 11] Olalee, C. C. Allen, Olalee, A. L. Starkey, Hollywood, Wade S. Rowe, Pisgah, Will G. Sartin, Pisgah, Griff Callahan, Langston, Chas. Utter, Langston, T. Gaines Elkins, Tupelo, Steve J. Mitchell, Tupelo, Perry B. Hall, Larkinsville, J. B. Selby, Larkinsville, Pleas Kennamer, Woodville, Wm. Bishop, Woodville, P. W. Page, Woodville, Roy Wilbourn, Trenton, Richard Hill, Collins, Chas. Grady Swaim, Collins, Tom Austell, Collins, John W. Butler, Bishop, P. R. Sanders, Kyles Spring, O. C. Proctor, Scottsboro, Wm. McCutchen, Scottsboro, Tom W. Flowers, Scottsboro, L. D. Dean, Scottsboro, J. Exum Sumner, Scottsboro, John L. Staples, Scottsboro, J. W. Austell, Scotts-

boro, J. H. Harris, Section, J. A. Galloway, Section, McKinley Gilbreath, Section, J. A. Staten, Section, Granville Carter, Section, Luther B. Whitten, Section, J. A. McFarlin, Garth, J. A. Houk, Garth, J. G. Enochs, Hollytree, W. C. Scroggins, Dutton, Fred Morris, Dutton, Robert Hope, Dutton, Tom J. Dean, Dutton, Sam Dobbs, Dutton, T. M. Holloway, Dutton, Joe M. Kennamer, Gross Spring, Albert Britt, Haigwood, R. D. Bryant, Haigwood, John D. Culpepper, Haigwood, W. G. Isbell, Lim Rock, W. B. Clark, Princeton, J. F. Wilkins, Wininger, M. P. Adams, Rosalee, Alfred James, Deans, M. H. Moore, Deans, Eli L. Brown, Deans, J. E. Creswell, Deans, B. M. Bradley, Deans.

Special Jurors

The following is a list of 25 special jurors drawn to supplement *to* regular list above of 75. According to law only 100 jurors can be summoned at one time and if more are needed during progress of Court the judge is empowered to [fol. 12] draw them as needed. The following jurors also reported next Monday morning:

Wm. E. Moore, Pisgah, Mose Dawson, Scottsboro, John Strawn, Section, Joe L. Outlaw, Section, Marion Johnson, Lim Rock, Lee Golden, Princeton, W. Gordon Harris, Hollywood, Jno. L. Blevins, Stevenson, Wm. E. Glover, Lim Rock, Tom Shepard, Swaim, Willie J. Wells, Paint Rock, John N. Hatchett, Swaim, Geo. O. Cook, Paint Rock, Hub F. Everett, Paint Rock, Avery Steele, Olalee, J. Walter Clunn, Princeton, Tom Arnold, Pisgah, John W. Sumner, Scottsboro, Albert Hoge, Tupelo, Charles S. Sewell, Flat Rock, Lee Sahby, Maxwell, Joe A. Ross, Woodville, Geo. R. Allison, Stevenson, Jesse C. Smith, Section.

(Here follows picture from Jackson County Sentinel, side folio 12)

ALLEGED NEGRO ATTACKERS AND THEIR VICTIMS

Pictured above are the nine negroes indicted on a charge of raping two white girls after they had thrown the white boy companions of the girls off a Southern freight train between Stevenson and Scottsboro Wednesday of last week. In the photo the negroes are seen guarded by soldiers with automatic rifles and riot guns.

Below is a photo of the two girls, Ruby Bates, 17, and Victoria Price, 20, who accuse the nine negroes of rape. These girls identified all of the negroes pictured above as attacking them.

[fol. 12½] Jackson County Sentinel

(Editorial)

Scottsboro, Ala., April 3, 1931.

The Case of the Negroes

The editor of the Sentinel is informed that the attorneys for the nine negroes being held for rape of two white girls on a train in Jackson County, last Thursday will petition for a "change of venue" under the claim that newspaper stories and other propaganda have made it impossible to get a fair and unprejudiced trial in Jackson County for the negroes.

This claim is without foundation at all. The citizenship of Jackson County just wants one thing—justice. They would want the same thing for white men charged with this offense just the same as they want it for the blacks. Under most trying circumstances our citizenship has acted fairly and, we believe, most wisely. If these negroes are guilty of the heinous crime of which they are charged they should get the severest penalty of the law, is our honest opinion. If they are not guilty, they are the most mistreated so far as charges are concerned, of any men ever arrested in this county. None of the parties, either negroes or white, are residents of Jackson County. Jackson County certainly gets no pleasure out of the matter.

But in justice to the Sentinel and the article it printed last week regarding the affair, we tried very hard to temper the story down to keep from inciting the people rather than to do so. There was testimony of the two girls that was entirely too revolting to go in any paper or even be made public property. If these stories are true, these nine negroes are all guilty and should pay. The negroes have offered nothing to refute these charges except their mumbled "not guilty" answers in the court Tuesday. It is their privilege and the privilege of their attorneys at the trials next week to prove these charges false if they can do so. The citizenry of this county and this state wants these negroes to have every opportunity to prove their innocence before a verdict is rendered. If they cannot prove innocence the law is expected to do its full duty.

Next Monday should be orderly in Scottsboro in every way. A tremendous crowd will be here, most of them out of curiosity. The town will have a hundred or more soldiers in it too. Everybody is urged to keep down any and all friction with the troops. They are nice, gentlemanly [fol. 13] young men from our neighboring counties who will carry out their every obligation to their state and country and are not sent here as "bullies" to intimidate citizens.

The Sentinel is not prejudiced. The nine negroes face the gravest charges ever docketed at one time in Jackson County or Alabama. The evidence against them is corroborated and witnessed. It hardly seems possible that all evidence can be broken down, but these negroes will be given every right of defense of their own liberties and lives. Jackson County lives by the law; it will accept the settlement of this matter by the law. But we just want the world to know that these negroes were not scooped up on vague charges and slammed in jail on a pretense of a rape charge. The editor of this paper heard and saw the two poor white girls identify and point out the negroes and heard and saw the white boys who were thrown from the train and the one who was held prisoner and witnessed, he said, the wholesale rape of these two helpless white women, identify and point out every one of the nine blacks, as parties to the rape and assault. This white boy was bruised and scratched, he said by the negroes choking and beating him. The Sentinel is not trying to convict the negroes without a trial—it just resents the insinuations on those who accuse our citizenry of being acting on race prejudice, when evidence and not prejudice is what is holding and indicting these negroes. We fail to see where a change of venue could benefit the negroes very much, if any. The testimony would be the same, and the witnesses are as well known elsewhere as in this county and court.

A Hideous Blot

(Chattanooga News)

How far has our vaunted Southern chivalry sunk when we must contemplate two young women being forced out into the world to find work, and when we review the fact

that they were then forced to return home in overalls, stealing a ride in a gravel car on a freight train.

How far has humanity sunk when we must contemplate the frightful things which occurred in that gravel car.

How much farther apart than night and day are the nine men who perpetrated those frightful deeds and a normal kind-hearted man who guards his little family and toils through the day, going home to loved ones at night with a song in his heart.

[fol. 14] How is it possible that in the vesture of man can exist souls like those nine, while others in the vesture of man can dream such beauty as Keats dreamed, or can paint as did Raphael, or sing as Caruso, or play as Kreisler? The beast of the fields do not differ among their own kind as do men, who are either blessed or cursed with imagination.

The terrible story of the ride on that freight train between Chattanooga and Scottsboro was strangely depressing to all the South. It lay like a weight on the heart of those who read it.

The News urges the Alabama grand jury to return speedy indictments. We still have savages abroad in the land, it seems. Let us have the solace of knowing that at least we have arisen above the justice of savages.

Mob Violence Again Averted

(Montgomery Advertiser)

Sheriff Wann, of Jackson County, is a cool, sensible and determined officer of the law, the sort of man whose neighbors must have learned to respect before they had occasion to test his mettle. Otherwise those 300 Jackson County citizens might have opened the jail at Scottsboro, and seized the nine or twelve negroes who were charged with criminal assault upon two white girls. But with nine deputies and one volunteer standing by his side the sheriff sent word to the impassioned men without that he would fight before surrendering the prisoners. They stood around a while—300 of them, say the dispatches—when the weather turned cold unexpectedly and to be comfortable they dispersed and went to their homes.

The circumstances were peculiarly trying. Some of the negroes have confessed that 12 of them attacked two white girls, two of the negroes having escaped capture. Ordinarily it would be next to impossible to restrain the mob spirit in such circumstances. But two factors entered into the success of Sheriff Wann in protecting his prisoners. The first is that the angry citizens without must have known that the Sheriff was in earnest. The second is the growth of anti-lynching sentiment in Alabama. Today mobs are more reasonable and tractable than they used to be, because it has been the policy of public officials, especially Governors, and the policy of newspapers, for many years to condemn mob action. Alabama Governors generally have been vigorous in their efforts to combat the mob spirit.

[fol. 15] Governor Miller acted promptly and in the best Alabama tradition in sending National Guardsmen to Scottsboro. This was a wise precautionary measure.

The courts are acting promptly in arranging for a grand jury investigation of the crime.

In other words, in the face of extreme provocation, Alabamians have again shown that they are willing to let the law have its way.

Defendant separately and severally offered in evidence, in support of their petition for change of venue, said Exhibits "A" and "B", separately and severally, and the same were accordingly admitted in evidence, separately and severally.

In support of said petition for change of venue, defendants separately and severally offered the following oral testimony:

M. L. WANN, having been duly sworn, testified as follows:

"My name is M. L. Wann. I am Sheriff of Jackson County, Alabama. To bring these defendants to Court to trial today I did call this National Guard unit to accompany the prisoners in court, although I did have a crowd here, I did not see any guns or anything like that and I did not hear any threats. I had this National Guard unit to accompany the prisoners to court when they were brought here

several days ago. As Sheriff of this county I deemed it necessary for the protection of the defendants for the National Guard unit to bring them to court. That was not only on account of the feeling that existed here against these defendants, but by people all over the county. I deemed it necessary not only to have the protection of the Sheriff's force but the National Guard."

Cross-examination:

The Solicitor for the State propounded to the witness the following question:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Defendants separately and severally objected to the question on the ground that it is leading; on the further ground that it calls for a mental operation of the witness; on the further ground that it calls for a conclusion of the witness; on the further ground that it calls for an unauthorized conclusion of the witness; on the further ground that it calls for incompetent, irrelevant and immaterial testimony. The court overruled the objection, and to this ruling of the court defendants separately and severally [fol. 16] reserved an exception.

The witness answered: A. Yes, sir.

The witness testified further: It was more on the grounds of the charge that I acted in having the guards called than it was on any sentiment that I heard on the outside. I have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse. It is my idea, as Sheriff of the county that the sentiment is not any higher here than in any adjoining counties. I do not find any more sentiment in this county than naturally arises on the charge. I think the defendants could have as fair trial here as they could in any other county adjoining. From association among the population of this county, I think the defendants could have a fair and impartial trial in this case in Jackson County. That is my judgment. I have heard no threats whatever in the way of

the population taking charge of the trial. It is the sentiment of the county among the citizens that we have a fair and impartial trial.

Redirect examination:

I have troops here right now to keep the crowd back from the court house, and there is a great throng around this court house right now that would come in if I did not have the troops; they are from different counties here today. I know there are lots of them; there are several from Madison, Marshall and DeKalb. There are hundreds of them around the court house at the present time. They are not allowed by the guards to come to the court house. That is the rule. At the time these prisoners were arrested and brought to this jail I estimated the crowd at around two hundred. Then I took precautions to protect them. I thought that was my duty as an officer. I think there are three or five units of the National Guard here, protecting these defendants at the present trial, if I understood Major Starnes. I have five units of the State militia here now.

Joe Starnes, having been duly sworn, testified as follows:

Direct examination:

I am Major Starnes, of the Alabama National Guard. I have one Hundred and seven enlisted men here protecting these defendants. There are five units of the National Guard represented. I have eleven officers. I have one hundred and seven enlisted men and some non-commissioned privates. Two companies accompanied these defendants to this court. Several days ago I had a picked group of [fol. 17] twenty-five enlisted men and two officers from two of my companies to bring these defendants over for arraignment. I received the call — the State adjutant General at Montgomery at nine o'clock P. M., on the evening that the attack occurred in the afternoon. On every occasion I have been in Scottsboro I have found a crowd of people gathered around, and at the present time I have issued or-

ders to my men not to let any come in the court house or court house grounds with arms. That situation exists right now, and has existed not only today but under orders of the court on every appearance of the defendants. My units of the National Guard have protected these men and have been with them on every appearance they have made in this court house. Every time it has been necessary, and for the arraignment of the defendants, I have brought them here and have carried them away. After these men were arrested, I first brought them back on Tuesday of the past week, is my recollection, March 31st. I brought them back here for arraignment. We arrived here at 10:30 and left at 4:00 o'clock. I brought them at 10:30 in the morning and left at four in the afternoon and took them back to Gadsden, then I brought them back here and arrived at 5:15 o'clock this morning. I have had them here twice from Gadsden. I brought them here and carried them back.

Cross-examination:

I first came here, of course, under orders from the Governor, and I have been here under his orders ever since. This is the third trip I have made here from Gadsden. In my trips over to Scottsboro in Jackson county and my association with the citizens in this county and other counties, I have not heard of any threats made against any of these defendants. From my knowledge of the situation gained from these trips over here, I think these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict. I have seen absolutely no demonstration or attempted demonstration toward any of these defendants. I have seen a good deal of curiosity but no hostile demonstration. In my judgment, the crowd here was out of curiosity, and not as a hostile demonstration toward these defendants.

The foregoing is all the evidence offered on the hearing of said petition of defendants for a change of venue.

The court denied said petition for change of venue and dismissed the same, to which action of the court defendant

reserved an exception. The court entered the following order denying and dismissing said petition.

[fol. 18] ORDER OVERRULING PETITION FOR CHANGE OF VENUE

"The petition for change of venue having been heard on this 6 day of April, 1931, before the Honorable A. E. Hawkins, Judge, presiding, on the evidence introduced in open court and the exhibits, the copy of the Jackson County Sentinel and the proof introduced for the defendants, and for the state, and the court being of opinion that said petition is not well taken, the same is overruled and disallowed. It is, therefore, ordered and is the judgment of the court that the defendant's petition for a change of venue in this cause be, and the same is, hereby dismissed. The defendants duly excepted to the action of the court in dismissing their petition for a change of venue."

Upon motion of the State, the court granted a severance as to the defendants in this case, to-wit: Charley Weems and Clarence Norris, and this case proceeded against said defendants. After a jury had been struck to try this case the following proceedings were had:

VICTORIA PRICE, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Victoria Price. I live at Huntsville, Alabama. I am twenty-one years old. I was before the grand jury at this term of the court here a few days ago. Before that on Wednesday, the 25th day of March of this year, I was on a freight train — through Jackson County. I got on that train at Chattanooga. Ruby Bates was with me on that train. There was someone else. I saw these two defendants, the two sitting right over there, on that train. The train was right this side of Stevenson in this county when I first saw them. The train was traveling from Chattanooga. These defendants, Charley Weems and Clarence Norris, were coming over the train when I first saw them. I was riding on a gondola car. That is a car with no top on

it. It has sides on it. I was inside of that car. That car was loaded with chert or gravel. It was not full to the top with chert or gravel. It lacked two or three feet on each side being full. When I first saw these defendants they were coming over the top of the train; they were coming over the top of the box car next to the gondola, into the gondola which I was in. There were some other negroes with these defendants. Twelve of them, all negroes, came over the top of that car. I know which was the first one that got down into the car in which I was riding; it was one of these defendants, the one sitting right over there, Charley Weems. He had the pistol, a .45. He was the first one that jumped over in the car, and he said "unload." He had that pistol in his hand. Two of the others also had pistols. I don't think I saw Clarence Norris with a pistol. He did not have a pistol. When they came into the car I was in, Clarence Norris asked me if I was going to put out. The one [fol. 19] that had the gun picked me up in his arms and said he was going to throw me out of the gondola. He got me by the leg and by the ankle and slung me back in the gondola and picked me up like he was going to throw me out of it. Then Clarence Norris grabbed me and had sexual intercourse with me. His private parts penetrated my private parts on that occasion. He absolutely had intercourse with me there in that car. At the time, Norris was having intercourse with me the defendant Weems had a knife on my throat. He had one of his hands on my face and the other hand with his knife, so I could not holler. He would not let me raise up. I struggled, hollered and screamed. Some of the other defendants were standing around at that time. The little one, the smallest one, was holding my legs. That train stopped at Stevenson and in Paint Rock. It did not stop between Stevenson and Paint Rock. One of these defendants, Clarence Norris, pulled my overalls off me, and had intercourse with me. The other one helped him; he held me while the other one pulled my clothes off. He took my overalls off and pulled my step-ins off me, pulled them apart. I did not afterwards put my clothese on before I got to Paint Rock. My clothes were not on until I got there, until just before the train stopped; my clothes were not on good when it stopped. When the train stopped at Paint Rock, I was lying there and I got up and fastened my clothes on me and got up on the side of the gondola and climbed

off and I liked one step of going to the ground, and I didn't remember anything for about an hour after I got off the car. That occurrence happened between Stevenson and Paint Rock, while the train was traveling, going fast, between those two points. I don't know about the territory I was in, but about ten minutes after we left Stevenson, they came over the car. There were twelve of them, and these defendants were among the twelve. There were seven white boys, all of whose names I could not call, were in this car when these negroes came over. They were in there before the negroes got in there. Ruby Bates was in there. There was no relative of her's along and no blood relative of mine along. There was not a boy traveling with me.

Cross-examination:

I got on that freight train at Chattanooga, Tennessee. Ruby Bates was with me when I boarded that freight train. She is single. I am single. I have been married. My husband and I are not divorced. I do not know where he is now. I have not seen him in nearly a year. He was in Huntsville when I last saw him. I live in Huntsville.

[fol. 20] Defendant's counsel thereupon propounded to the witness the following question:

Q. Did you leave him at Huntsville?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

I married my husband the 18th of last December, a year ago. I have seen him once in a year. That was in Huntsville. I have not been keeping up with how many days ago that was. It has been about a month, not hardly a month, when I saw my husband last. He was leaving for New Orleans the last time I saw him. I have not seen him since and don't know where he is now. I don't reckon he is in Huntsville. My home is in Huntsville. I was not born and raised in Huntsville. I was born and raised near Fayetteville, Tenn.

Counsel for defendants thereupon propounded to the witness the following question:

Q. How long had you known your husband before you married him?

The State objected to the question, the court sustained the objection, and to this ruling of the court the defendants separately and severally reserved an exception.

The witness testified further:

I went to Chattanooga on Tuesday before I came back Wednesday. I just stayed up there one night. I went from Huntsville to Chattanooga. I stayed at Chattanooga that night on 7th Street at Mrs. Brochie's. I was with this young lady at that time. I was not dressed in overalls when I went to Chattanooga. I got them at home. We took off our dresses and put on overalls to keep from getting hurt. We intended to board the freight train. We went up there on a freight. We did not have any money. I went to Chattanooga for the purpose of getting a job and I looked for a job. I just stayed there one night. This lady I went to see took me over to every mill in Chattanooga. I got to Chattanooga when the freight went in there Tuesday night. I got in between seven and eight, about seven-thirty, at night. I left Chattanooga on the morning freight, the next morning. I went to every mill in Chattanooga and this girl went with me. Mrs. Brochie took me to these mills. She lives in Chattanooga on 7th Street. I went to Mrs. Brochie's because she was a friend of mine. Callie is her first name. She is married. I asked a boy where she lived and he said she lived on 7th Street. I don't know what boy that was. I met him on the sidewalk in Chattanooga. I don't know who he was. He was [fol. 21] not a friend of mine; well, one way he was, or he would not have told me where she lived. I had not know him before. I asked him did he know where Mrs. Callie Brochie lived and he said "Yes," and I said "Will you please tell me?" and he said "Yes, she lives on 7th Street." I went to Chattanooga on a freight, in a box car. I had on overalls when I went into Chattanooga, and so did the other girl. I ran up on this boy on the street and he said he knew Mrs. Callie Brochie. He did not take me out to the house. He told me she lived in the fourth house on 7th Street and I went to the fourth house. I don't know how many blocks that is off Market Street. I walked up

to her place on 7th Street. I went three or four blocks. I did not go a mile from where I got off the box car to Mrs. Brochie's. I went four or five blocks. I did not count them. I walked, but I do not know what number. I don't know whether it was the 100 or the 200 block. I could not tell you whether I went east or west from Market Street. We left Mrs. Brochie's house between six and seven o'clock the next morning going to the mills. I left Chattanooga when the freight left there. I did not have a watch. It was between 11:30 and 12:00 or 12:30 o'clock. I visited two mills during the morning and got on the train between 11:30 and 12:00 or 12:30. I did not have on overalls when I went to apply for jobs. I had on a dress. I put on my overalls in Huntsville when I went to Chattanooga. I did not wear overalls during the time in Chattanooga. I had never been to Chattanooga before. I have never been to Scottsboro before. I was not in company with any white men on that trip. I saw some white boys. There were some white boys in that car box as we went up, but we did not talk to them. They were sitting in one end and we were in the other. There were not any white boys in the box car with us when we got on in Chattanooga. This woman I spent the night with in Chattanooga went to the depot with me. I went from the depot down where the train takes water. I did not get on any box car coming back out of Chattanooga. I got on an oil tank coming back to Stevenson, and from Stevenson to Paint Rock I was in a gondola. That is an open car. There was gravel in the bottom of it. I did not see any cement. In the lower end of the gondola we were in, there were seven white boys. We were in the oil tank when I first saw the white boys. One of them went with us from the oil tank down to the gondola and helped us in the gondola. We asked him to and he helped us. [fol. 22] They were sitting on the lower end and they came on down and got in and they were sitting in the lower end and Ruby Bates and I started to get out and we thought we would stay in there, and they started singing and one of the black boys came over. The colored boys told us to unload and I told them they did not have any business in there. All the negroes had knives and guns and things and they were drawing and slashing around there and a part of the white boys got out and a part were knocked off. The white boys did not have time to say anything to the

colored boys. Twelve of the colored boys came into that gondola. All of them came over at the same time. I must have counted them or I wouldn't have known how many there were. I counted twelve negro boys as they came over the top of the car. I was not excited at that time. It did not scare me. I don't reckon there was any fight started between the white boys and the colored boys. The white boys and the colored boys did fight in the gondola, where we were. They were trying to defend us, trying to help us out. These colored boys came on over there and ordered the white boys out, saying they going to shoot. The white boys did not say anything. The colored boys came over and said "All you sons-of-bitches unload." The colored boy sitting there behind defendants' counsel said "unload." I don't know his name. Then he knocked one of the white boys in the head with a gun. Both of these boys here did not have guns. The one sitting there had a gun. I don't know his name. I know another colored boy had a gun but I cannot point him out. I said there were two guns, and I still say two guns. I don't know the name of the other one that had a gun. They must have pointed a gun at me. They hit me on the head with it. When they came over they were getting the white boys off first. They knocked two white boys in the head with guns, not with their fists. They must have hit them with the butt of the gun. I know that one yonder hit him with the butt of it because I seen him hit him with the butt of it, and when he jumped over in the gondola and grabbed me by the leg he threw me down in the gondola and put a knife against my face. There was one white boy on the car that seen the whole thing, and that is that Gilley boy. I surely know which one of the other negroes had a gun. I know his old mug. I don't know his name. Yonder he sits (indicating) right through yonder. I don't know his name, but I am pointing my fingers at him. I am sure about that. He had the gun in his hand. The other one that had a gun is sitting right there (indicating). Those guns were going so fast in there I could not tell whether there were only two that drew their guns on me. There were only two guns I seen and the rest had [fol. 23] pocket knives. Every one of the negroes had pocket knives. Every one of them had their knives open. I did not say they had their knives sticking at me. I said they had them in their hands. If they had wanted to cut

me they could have. The other girl was standing right there with me. They made these white boys get out, all except one. They made them get out with the guns. Two of the boys jumped off the gondola, and the other jumped off; they made them get off. I just met the white boys on the train. A part of the white boys jumped off immediately when those negroes came over. A part of them were made to get off and the other two were knocked off. There were seven white boys, and one of them was left on the gondola and seen the whole thing through with. Two of the white boys fell off when the negroes knocked them in the head with pistols, immediately when they came over. One was lying down flat on his stomach and the negro walked up and hit him in the head and when he hit him in the head he said "Get off, you son-of-a-bitch." They left one white boy in that car because the train was going so fast that he thought it would kill him if he jumped off and he came back and they pressed a knife on his throat there in the corner, and he watched all of them do the work. These negroes made six of the white boys get off the train. The other one must not have gotten off because he didn't want to get killed. He wouldn't get off because he was young and he would have fallen if he had jumped off the train going at a high rate of speed. The others got off but they got skinned up pretty bad too. All seven white boys were on this train when it left Chattanooga. We were all on the same car. We had spoken a few words with the white boys, but that wasn't in no loving conversation. It was about ten minutes after we pulled out of Chattanooga when I first saw these negroes coming from the oil tank into the gondola. I don't know where these colored boys boarded the train. I don't recall that. I put on my overalls in Chattanooga. We had the overalls on over our dresses. I had a dress under my overalls. The other young lady and I did not carry the overalls. We wore them. I did not wear them while I was in Chattanooga. We carried them for the purpose of riding freight trains. When Thurman, the one that got knocked in the head, climbed out of the gondola and fell, he looked back and seen the one sitting behind defendants' counsel grab me by the leg and jerk me back in the gondola. He must have told me to take off my clothes. He didn't tell me to keep them on. He said "Are you going to put out?" and I said "No, sir, I am not," and he

said "You will or die." I suppose I knew what he meant [fol. 24] when he asked me if I was going to put out. I told him "No, sir, I wasn't," and I said "I will die before I will," and when he threw me out of the car I commenced screaming and he put me back in there and stretched a knife on my face. There wasn't but one white boy in there and twelve negroes and I began to scream and they wouldn't let me scream; they kept a hand in my mouth. That one there (indicating) took my clothes off of me. It took two of them to take my clothes off and took three of them to ravish me, and they wouldn't have if they hadn't had knives and guns. The other negroes had the other girl that was with me, over there. I couldn't tell you who the other negroes were that ravished her at that time. I don't know the ones that was over there with her. I know those negroes were taking the other girl's clothes off, but I don't know their names. I don't know them for sure. I will not be positive about them. I know how many there were; she had three. I had six. Three of hers got away; I reckon they got away. I said there was six of her's, but three got away. There were six to me and three to her, and three of her's got away. It took three of them to hold me. I said one was holding my legs and the other had a knife to my throat while the other one ravished me. It took three of those negroes to hold me. I- took two to hold me while one had intercourse. The one sitting behind defendants' counsel took my overalls off. My step-ins were torn off. I did not say they were taken off. This negro boy tore them off. He held me while he took them off. Six of them had intercourse with me. The one sitting there (indicating) was the first one. I don't know the name of the next one. I suppose I know them when I see them. I can surely point out the next one. Yonder he sits, yonder (pointing). That boy had intercourse with me. The third one was the little bit of one; yonder he is (pointing). He held my legs while this one and that one ravished me and then he took my legs again. I just showed you the third one that had intercourse with me. Yonder sits the fourth one that had intercourse with me. I don't know his name. All I can do is point him out. That boy was the fourth. That one (indicating) is the fifth one that had intercourse with me. The sixth one, is sitting there behind defendants' counsel. He was the sixth one, the last one that ravished me. I didn't have

a watch and I couldn't tell you how long it took for six of them to ravish me. I don't know how much time elapsed, but it seemed like two hours or three hours. They would not let me up between times, not even let me up to spit. I must have tried to spit. I had snuff in my mouth. They [fol. 25] did not all run away when they got through. They were in the gondola when the train stopped for Paint Rock. When one negro got through having intercourse, he just stood there. My body was not bare. I did not say anything about my body being bare. They left our dresses on; just took off our overalls and step-ins. I did not have on that dress I am now wearing. When one got through the other would step up and lay down with me. I don't reckon I scratched any of them or put any marks on any of them. I offered resistance. I fought back at them. I would try to get up and he would not let me. He would put that knife on my face. Just one boy had a knife on my throat all the time. One boy held the knife on my throat until he was the last one. That was the one sitting behind defendants' counsel. He was the last one that held the knife there while all six of them, including himself, had intercourse with me. He was the last one. As the rest of them finished they just stood around there and watched. When they got through with me they were still in there, telling us they were going to take us north and make us their women or kill us one and we told them then that they would kill us then; that we were getting off at Huntsville, and they said they would throw us in the river. Paint Rock is where I left the train. The first one I knew when I came to myself in Paint Rock was my girl friend Ruby. I reckon I was unconscious. I did not know anything. My back was bruised up and I was "chiked" and everything else. He knocked me to my knees, got me entirely down; he asked me to lay down; he threw me down. He must have had to throw me down. I know he did. My back was beaten up. The one that had the knife on me bruised me up. This other girl was on one end of the gondola and I was on the other, just within a few feet of each other. I don't know whether we were in about two feet of each other. I knew what was going on with her. This girl and I did not say anything to each other while this was going on. I could not talk. They would not let us talk. I said something to these boys. We begged them to quit and they

wouldn't do it. I was begging them to quit. They did not beat me unconscious. I did not say they beat me unconscious. I was unconscious when I got off the train at Paint Rock. When I came to myself I was sitting in a store. I don't know who took me off. It was a grocery store. It was not a drug store. I know where I was taken from the grocery store and who took me. I was taken to the jail at Mr. Wann's here in Scottsboro, and I have been there ever since. I know who took me off the train. I took my-[fol. 26] self nearly off it and I fell the rest of the way. The officers did not come in this gondola and get me. I climbed up on the side of the gondola myself with Ruby's help and when I got to the last step I fell and when I came to myself, I was sitting in a store. When the train stopped, the colored boys jumped up from where we were and went to running toward the engine. The other girl and I got up and climbed upon the side of the gondola and seen what was going on. All of the people down there were catching those negroes. That was not on account of any complaint of mine. There was a man ran back to the store and called up down there and told them to stop the train. I was not told what the trouble was. I was not told nothing. I know it. I am not making up nothing or hiding nothing. I know it in my own mind and head. I have answered five times who came and got me off this train. I didn't say I was unconscious. I said I was unconscious after I got off the train on the next to the last step. I said I was brought to a store, a grocery store. You will have to find out who took me there. I became unconscious when I fell off the stirrup on the side of the gondola. I lost consciousness and don't know how I got to the store. I was taken to the jail from the store, and I have been in jail since.

Counsel for defendants then propounded to the witness the following question:

Were you ever in jail before?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

I don't know any of the police officers in Chattanooga. I do not know the police matron in Chattanooga. This

train, when they started this raping, was on the railroad track, about ten minutes after it left Stevenson. That is not where the first one ravished me; that is where they came over the train at that time. I don't know where I was when this raping started. I don't know anything about measuring the miles. I could not tell you that. I was riding. I know where the train was when the last one of the six completed the intercourse with me; it was about five minutes before the train stopped in Paint Rock; one of them negro boys had to make him get up. Neither one of these boys that ravished me had intercourse with me more than once; just once each. I have pointed out the six boys that had intercourse with me. I must have pointed out all six; it wasn't seven. I absolutely know each one [fol. 27] as they had intercourse with me; if I didn't I wouldn't say they did. I was not unconscious when they got through with me. I did not say I was unconscious. I did not say I was beaten up. I said I was bruised up a right smart. I was ravished to the point that I could not speak; you can call it what you please. I said I had never known the white boys until I got on the train with them. I have not been in trouble at all in Chattanooga. My clothes were not bloody. I wasn't cut up. I wasn't easy. I must have been hurting. I had a doctor to examine me. He did not tell me whether I was alright or not. I did not ask him whether anything was wrong.

Redirect examination:

The doctors made an examination of me after this affair there. I was at their office when they examined me, here in Scottsboro. That was just about an hour after this occurrence, an hour to an hour and a half after it happened. They brought me to the jail from Paint Rock.

Recross-examination:

The white boys had been in the gondola. I don't know how long they were on the train with us before I saw these negroes. I don't have no idea, but they were on the train in Chattanooga when we got on. There were seven of the white boys. The seven white boys were not with us girls. They were in the car with us, and these negroes came on the car when we got to Stevenson, or just after we had passed

Stevenson. There was a white boy in the gondola all the time the ravishing was going on. The negroes were only with us from ten minutes after the train left Stevenson until we got to Paint Rock, and all this ravishing was done. I was ravished by six different men, and that occurred by six different men from the time we left Stevenson until before we got to Paint Rock.

DR. R. R. BRIDGES, a witness for the State, having been duly sworn, testified as follows:

I am a practicing physician in this county. I am a graduate of the medical school of Vanderbilt University.

At this point counsel for defendants stated to the court that he would admit the qualifications of the witness as a physician.

The witness testified further:

I know this witness that just left the stand, Victoria Price. On or about March 25th, last, here in Scottsboro, I made an examinaion of her person. She was at my office when I made that examination. It was about four o'clock or a bit after, I don't remember exactly. There was another physician present the County Health Officer, [fol. 28] Dr. Lynch. I found a few bruises on the body of Victoria Price, in the lower lumbar region, down about the top of the hips, and a few minor scratches on the left arm, I believe, one of the arms, just short scratches. I did not find any other bruises anywhere else on the body. I examined genital organs. There were no lacerations or tears; it did not show any bruises, but it showed the semen, the male germ. I got the semen out of the vagina. We just made a mop smear on a slide and put it under the microscope and examined it under the microscope. I found spermatozoa. That is the male germs. We made examination of the body for bruises and those things. We did not make any further vaginal examination. I could not say that the spermatozoa I found were alive; they were non-motile. In my judgment, from that examination, there

had been an intercourse with a man. This was possibly a little after four o'clock. I did not find any recent lacerations. Victoria Price was not hysterical at all at that time, but she wanted to do a lot of talking. She made complaint to me about the treatment she had received. Ruby Bates was present at the time I made the examination. In my judgment as a physician, from the examination I made of the genital organs of Victoria Price, six men, one right after the other, could have had intercourse with her, without lacerations. That is possible.

Cross-examination:

We did not count the spermatozoa we found in the vagina of this woman. One time probably would run from one to three million. A male discharges about a dram to three drams, which is about two teaspoonfuls. A discharge from a male amounts to from one to two teaspoonsfuls. From the Price woman there were no spermatozoa in the vagina. We made a smear into the vagina cervix to obtain this. I found spermatozoa in her. The slides were covered with the sperm; you see they are very small. From each male there is from one to two teaspoonfuls. I could not count the spermatozoa I found. You see one time there is probably enough to impregnate two or three million women. We found some in the other girl. We found the spermine in the other girl. That carries the male germs. That is a secretion that comes with the spermatozoa. You have the urethra secretion that comes just before the spermatozoa. That comes from the male. We found spermatozoa in both of these girls; I would call it much in each one, a great amount; in one smear we would find eighteen to twenty in one field. I could not say that these germs were alive at [fol. 29] the time I found them. They were non-motile. We put them on a glass slide. I could not say how long they had been there, but they were non-motile at the time I found them there. The Price girl had a few little blue spots on the back down in the lower lumbar region. They were small. She was not lacerated at all. She was not bloody, neither was the other girl. None was bleeding. The discoloration I speak of was very small. The girls were not hysterical at the office on that examination. I saw them the following morning at the jail for further ex-

amination and they were crying and nervous about it. They did not have anything to say about the white boys other than they were put off. There were no lacerations of recent date about the vagina of either of the girls; there were lacerations of old duration.

Counsel for defendants thereupon propounded to the witness the following question:

Both of these girls admitted to you they had had sexual intercourse previous to this, didn't they?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

Counsel for defendants propounded to the witness the following question:

Q. Both of them told you they had had sexual intercourse, one told you she had been married and the other told you she had been——

The State objected to this question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

Counsel for defendants then propounded to the witness the following question:

Q. From your examination, could you tell whether or not they were subject to intercourse? Were they virgins?

The State objected to this question, the court sustained the objections and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

The Bates girl was bruised about the vagina. At the lower end of the vagina on either side in the groin there were two blue places, one on each side, about the size of a nickel, or a little larger, probably. I could not say that intercourse caused that.

Counsel for defendants then propounded to the witness [fol. 30] the following question:

Did you find anything in the vagina that indicated to you these girls had had or might have had gonorrhea or syphillis?

The State objected to this question, the court sustained the objection, and to this ruling of the court the defendants separately and severally reserved an exception.

Counsel for defendants propounded to the witness the following questions:

Do you know whether or not these girls had gonorrhea or syphillis?

The State objected to this question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

They were not lacerated. They were not bleeding and not hysterical in the afternoon when I saw them.

Redirect examination:

I found marks on the throat of one of them. Mrs. Price if I remember, had a blue place along here (indicating) on the throat. It appeared to be bruised. It was discolored.

Recross-examination:

These girls were not torn and were not bleeding. The lips of one was swollen a bit, I don't remember which.

Redirect examination:

I examined Mrs. Price's breast only by inspection. I don't remember picking it up and palpating it. I did not see anything by looking at it.

Recross-examination:

Counsel for defendants propounded to the witness the following question:

Q. Did these girls admit to you they had been in the habit of having sexual intercourses?

The State objected to this question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

Counsel for defendants then propounded to the witness the following question:

Q. Did this particular one (Victoria Price) or either one of them tell you they were subject to sexual intercourse?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

[fol. 31] The witness testified further:

Mrs. Price stated to me she had been married twice and knew no other man but her husband.

Counsel for defendants thereupon propounded to the witness the following question:

Q. Did the other girl make a statement to you about whether she had ever had sexual intercourse before?

The State objected to this question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

Dr. M. H. LYNCH, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I am a practicing physician.

At this point counsel for defendants admitted the qualifications of the witness as a physician.

The witness testified further:

I am head of the health department of Jackson County, Alabama. I know Victoria Price. I was present and made with Dr. Bridges an examination of her person along about March 25th. We took her from the jail to Dr. Bridges' office. We found on Victoria Price the next morning some bruises and scratches on the body. Those bruises on Victoria Price were on the left wrist and the left arm and in the small of her back. We did not examine them for bruises that afternoon; it was the following morning. I made an examination of her vaginal organs. I found no tears or bruises on the vagina of Victoria Price at that time. We took a smear from the vagina and examined that and found

male spermine present, under the microscope. We only got enough semen out of the vagina to make a smear.

I have no idea of the spermatozoa that was in there. There was no comparison with the two. There was more in Ruby Bates than there was in Victoria Price. On Victoria Price we had to take a smear from the vaginal walls, but in Ruby Bates there was, I guess, probably two spoonsful in the vaginal canal. In my judgment as a physician, from my examination made on Victoria Price, she had had sexual intercourse with some male. It would not hardly be possible to tell how long before that. I could not at all tell the difference in the spermatozoa of a negro and a white man.

Cross-examination:

I would not undertake to say whether these girls had had sexual intercourse immediately after coming out of Chattanooga or after getting down to Paint Rock. I have [fol. 32] no idea how many men had intercourse with these girls. I have no idea about the amount of spermatozoa found in the vagina of these women only to the extent that there was more in one than in the other. I could not tell whether or not the girls had syphilis or gonorrhea. The girls talked with me about the case. They were not hysterical. There were only scratches and bruises on the backs of these girls. On the arms they were slight and on the neck prominent. One man could have brought about the bruises on the back having intercourse. There was nothing to indicate to me that they were beaten unconscious or into insensibility. The vagina was in good condition on both of the girls. There was nothing to indicate any violence about the vagina.

Tom Taylor Rousseau, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Tom Taylor Rosseau. I live at Paint Rock. I was present about the 25th of March of this year, in Paint Rock, when the defendants, including these two, were arrested and taken in custody on a freight train or near a

freight train. That was along about the 25th of March of this year. It was some time right after dinner, a little after dinner, that that freight train got to Paint Rock. I saw those defendants over there on or about that train when it stopped. The first time I saw the negroes—of course, I was not close to them enough to recognize their faces—coming out of a sand car. That is the same thing as a gondola car. We took off nine negroes, coming out of a gondola car. I imagine all came off there. That is all I could see. I identify them now. I think I can point out every one of them. I see them over there. I saw these girls, Victoria Price and Ruby Bates in the back end of the car, the same car the negroes came out of. I did not observe the condition of the girls right at that time, until after we removed the negroes from the train, and they all left the train. As the train comes in sight it comes around a curve and runs under a coal chute and was taking on coal when we first went to take them off, and while we were taking them off I noticed one of the girls—I don't know which one it was—raise up out of the car—at that time I didn't know which one it was in there—I seen the girl raise up and go back down and I did not pay any attention to her at all until after we got the negroes off and a white boy came running up. That is all I saw at that time. [fol. 33] I did not see the girls get off the car. I saw Victoria Price a little later. When I saw her at that time they were coming around the depot with her in a chair. She had her eyes closed and was lying over this way and they were bringing her from the depot up to town to the doctor's office. That was Victoria Price. I saw her later one time from where I was at. She was still in the chair. I did not go down to where she was at. She was still in the chair. I did not go down to where she was at. I am familiar with the distance in Jackson County along this railroad. I know where Stevenson, Alabama, is. From Stevenson to Paint Rock, I imagine to be somewhere a little better than sixty miles, somewhere along there. From Stevenson to Paint Rock is in Jackson County along the right-of-way of this railroad.

Cross-examination:

I clerk in the store for my father at Paint Rock. I did not testify that I was on this train. I was just down there

at the station when the train came in. What attracted my attention to this affair is that we were notified over the wire to take them off the train. That is all we knew at that time. I was not notified, but the deputy sheriff was, there. I am not a deputy sheriff. I just went down when I heard about it. The negroes were on the train when they were taken off. The bunch we removed, me and them other fellows, there was seven of them came out of that gondola, came out over the top of the train going toward the engine and I was standing next to the tender of the engine and there was four came off the car right below; there was a coal car next to the tender and there was four came off before they got on the coal car and another got on the coal car and came down it and another one went over on the coal car and was up in the middle of it and I kept to get him to come off and he was down in the middle of it on his hands and knees trying to do something and I told him to come off. I told him if he did not come off, I would kill him. He did come off. I saw some white boys there. There were four there. They come running up. They were not on the same car with the negroes. They came up the track. I did not see them on the train at all. The girls had on their overalls. I did not notice whether a part of the overalls was off them, so I don't know. One of the girls was not in condition to walk. I did not help carry her off. There was an officer toted the girl up there. They toted her off the train, a fellow named M. A. Mize. He had to carry her away from the train, unconscious. I don't know about what the doctor said about her not being un- [fol. 34] conscious at that time. I was not there. I was there at the time the girl was taken off.

Counsel for defendants thereupon propounded to the witness the following question:

Q. And if he (the doctor) testified immediately after their arrival here or at Paint Rock she was not unconscious, he is mistaken about it?

The State objects to the question, the court sustained the objection, and to the ruling of the court defendants separately and severally reserve an exception.

JIM BROADWAY, a witness for the State, having been duly sworn, testified as follows:

I was out at Paint Rock when those two defendants, among others, were taken off this train. I saw them on the train. I saw Victoria Price there. We got her off the freight train. She was on one of these gravel cars. That is known as a gondola car. There was another woman with her, the Bates girl. The Bates girl seemed to be in fairly good shape, but the other could not hardly talk and couldn't walk.

The solicitor for the State thereupon propounded to the witness the following question:

Q. Did you hear them make any complaint there, either one of these girls, of the treatment they had received at the hands of these negroes?

Defendants separately and severally objected to the question on the ground that it calls for incompetent, irrelevant, immaterial and illegal testimony, on the further grounds that it calls for hearsay testimony.

The Court stated, "I will confine it to Victoria Price."

Defendants separately and severally objected to the witness testifying as to what Victoria Price said, on the ground that it calls for irrelevant, immaterial, incompetent and illegal testimony, and on the further ground that it calls for hearsay testimony. The court overruled the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

I did not hear Victoria Price make any complaint, either to me or anybody else there, about the treatment she had received at the hands of these defendants over there. We sent and got a chair for Victoria Price and carried her to [fol. 35] the doctor's office at Paint Rock.

Cross-examination:

I am not an officer. I was on my way to Huntsville and I saw quite a bit of excitement going on there, and I stopped and they asked me if I would help take those negroes off the train.

RUBY BATES, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

My name is Ruby Bates. I live at Huntsville. Along about March 25th, of this year, I was in company with Victoria Price on a freight train traveling from toward Chattanooga to Paint Rock, Alabama. After the train left Stevenson, I saw those negroes, those defendants sitting over there by the side of defendants' counsel, on the train.

The Solicitor for the State thereupon propounded to the witness the following question:

Q. You say you saw those two defendants on the train?

Defendants separately and severally objected to the question in the form stated and pointing to the defendants by the Solicitor, on the ground that it calls for incompetent, irrelevant, immaterial and illegal testimony, on the further ground that it is leading; the court overruled the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness answered:

A. Yes, sir.

The witness testified further:

I say I saw them. When I first saw them they came over the top of the box car. When I saw them coming over the top of the box car they had guns and they told the white boys to unload. Then one of them hit one of the white boys in the head with a pistol. That one on the left hand side was the one that hit the white boy in the head with the pistol. Then some of the white boys began to get off the gondola, and all of the white boys got off but one. After the white boys got off, the colored boys throwed us down in the car. The one on my left hand side had a gun.

Cross-examination:

I had a talk with a doctor. I recall that I told the doctor. I have never been married. I had a conversation with the doctor about having sexual intercourse. I am talking about the doctor after I arrived at Scottsboro. I do not remem-

ber his name. He was the doctor that examined me at [fol. 36] Bridgeport. I just told him to examine me and see if he could find anything wrong with me. I told him about those negroes.

Counsel for defendants thereupon propounded to the witness the following question:

Q. No, not about the negroes, but did you tell him you had had intercourse before?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

The witness testified further:

I told the doctor I had had sexual intercourse. I had on my overalls when I got off the train at Scottsboro. I knew what was going in when I got off the train at Scottsboro. I knew what was happening. I knew there had been a fight between the colored boys and the white boys. I arrived at Chattanooga Tuesday afternoon. I was at Huntsville before I started to Chattanooga. I saw some white boys on the way from Huntsville to Chattanooga. There were several white boys on there. I could not tell you where the white boys got off the train at Chattanooga. I know where I got off the train. I got off in the yards, in the railroad yards in Chattanooga. I could not tell you whether the white boys were still on the train when the other girl and I got off. We got off first at Chattanooga. We went to Mrs. Brochie's when we got off in Chattanooga. Mrs. Brochie lived on 7th Street. I could not tell you how far that is from Market Street, for I had not been there before. I do not know whether it is one block off Market Street or two blocks or how far it was. We did not ride a street car. We walked. I do not know where Georgia Avenue is. We went to 7th Street. This woman had a two story frame house. She kept boarders. We did not pay her for staying there. She was a friend of this girl I was with. I have no idea how far off Market Street it was, the number of the house, or anything. I don't know whether she was married. I didn't ask her any questions myself. We stayed all night. The other girl and I occupied the same room there. The next morning we got up and went to the mill. Mrs. Brochie went with us, the woman that ran the boarding house. We

visited just one mill. That was the Thatcher Company Mill. I could not tell you where the Thatcher Company mill is. This woman that ran the boarding house went with us. We left Chattanooga at 11:45.

[fol. 37] The woman did not go down to the railroad yard with me to catch the freight train. I told this woman I was going to catch a freight train out of Chattanooga. I had on my overalls when I left Chattanooga. I did not wear my overalls when I visited this mill. I just had on my dress. We put on the overalls just before we left Mrs. Brochie's. I wore both my overalls and my dress, my overalls on over my dress. That was my first trip riding freight trains. I left Chattanooga at 11:45. The white boys were not on the freight train when I got on. I first saw the white boys after we got on the oil tank; some of them got on there. They were not the same white boys that rode from Huntsville over to Chattanooga. I did not know they were going to be on there. I did not know these white boys were going to be in that train. I had never seen these white boys before. They were not the same boys that came over with us the day before. I did not talk with them after I saw them on the train. I did not have any talk with them. I did not have any talk with them after I got down in the gondola. They got in one end of the gondola and we were in the other end and they were singing. I got in the gondola car. I did not get in where these boys were. We got in the gondola before they did, then they came in there. I did not talk with them, didn't say a word. I had not said a word to these white boys when I saw the negroes coming over. Nothing had been said between either me or my companion to the white boys. They were in one end of the car and we were in the other, sitting perfectly quiet, no sort of conversation, just sat there looking at each other. When I saw the negroes coming, one of the white boys looked up over the car and said "Look coming yonder," and we all looked up then, and they told the white boys to unload and the white boys still hadn't said nothing to us. There was one white boy out of seven left on the train. I do not know the names of any of the white boys. I could not tell you why they left this one. He stayed on in that gondola car. The negroes hit him but they did not put him off.

Counsel for defendants then propounded to the witness the following question:

Q. They could have put him off just like they did the rest of them, there wasn't any reason for not putting him off, was there?

The State objected to the question, the court sustained the objection, and to this ruling of the court defendants separately and severally reserved an exception.

[fol. 38] The witness testified further: They left him on the train. I could not tell you whether he was any older or bigger than the rest of them. They were all grown. The white boys and the negroes fought considerably in this car. This other girl and I saw the beginning of this fight. I did hear everything that was said. I was sitting right there and it all went on right before me. Not all of the white boys and negroes were fighting. The two biggest white boys were fighting. I could not tell you which negroes fought them. All of the negroes came over at the same time; didn't but two come over at first; two of them stepped down in the gondola and the rest followed them. The rest of the negroes came right behind the two in the gondola car. There was a little lapse of time, and the fighting had already started before the rest of the negroes came over. There was pretty much of a fight between those negro boys and the white boys. The other negroes came down there and they all got into it. All the colored boys were fighting. Some of the white boys began to get off the car when they told them to unload. Some of the white boys ran. Those white boys that were not fighting were the ones that ran away. There were two guns; just two guns were used. Two colored boys had guns. The white boys did not have any guns. When the fight started, the train was just this side of Stevenson. That is when the negroes came over. I do not know approximately how many minutes I had been out of Stevenson; I don't know how long it was. We were right around ten minutes out of Stevenson when that started. I had not been bothered at all up to that time and hadn't any conversation with the white boys; had not even spoken to the white boys; this girl with me had not spoken to the white boys. They were all sitting in one end of the car and we girls were in the other end, and not a word said between us; hadn't even recognized them in any sort of way. The negroes came over then in that gondola car and started a fight and some of the white boys jumped off the train. Two of the white boys

fought with the negroes and the rest of the white boys jumped off and left the train except one, and one stayed on the train. All of them ran away and just left one white boy in there. I could not tell you how much time elapsed while these negroes were ravishing me. I do not know how far it is from Stevenson to Paint Rock. I don't know how long it took; don't have any idea. This other girl, my companion, was in one side of the gondola and I was in the other. I was not in one end and she in the other; we were just side and side there in one end. This white boy was in the other [fol. 39] end while that was going on. That is where he was before the fight started. My overalls were taken off. They were on when I got to Paint Rock. I had a dress on under my overalls. The colored boys had a knife during the fight between the white boys and the negroes. I could not tell you how many knives the colored boys had. The other colored boys drew knives. I do not know which one it was. He held the knife on this girl. The same boy did not hold the knife on both girls. There were two of them that held knives on us. It was one of those great long knives. Both had knives just alike. The knives had long handles and long blades. The negroes that held the knives were not the same ones that held the pistols. I know the negroes that held the pistol. I don't know whether I know the ones that held the knives. The negro held the knife on me while I was having sexual intercourse. They held the pistol at the same time. The negro that held the knife on me held the pistol on me while this other girl and I were having sexual intercourse with them. He just held the knife against my throat. I could not feel the blade. He held that across my throat while I was having sexual intercourse, and another negro held a gun on me. There were three negroes to each girl, one for intercourse and one for holding the knife and one for holding the pistol. They never did remove the knife or pistol. While six men had intercourse with me they stood there with a knife and pistol on me. They put the knife and pistol up after this was over. I could not tell you how long they stood there with the knife and pistol drawn on me. I don't have any idea about how long it was. I remember getting off the train. Someone did not come on the train and get me off. I just got off the train. I voluntarily told the officers. After I got to Paint Rock, I told them there had been a fight on there between the negroes

and the white boys. After I got off at Paint Rock, I told the people there had been a fight between the negroes and white boys. I had on my overalls at that time. They did not take me to a hospital. I was all right when I got off the train. I am seventeen years old. I have been working a year and over. My home is at Huntsville. I was not born and raised there. I have never been married. I have never lived in Chattanooga. That was my first time in Chattanooga. I have never been to Birmingham. I have never been away from home before. I have been knowing this girl that was with me a little over a year. I have never been out on trips before. We had never been with each other on trips. I had never ridden a freight train before. This was the first time.

[fol. 40] Redirect examination:

After I got off at Paint Rock I told those men there had been a fight between the colored boys and the white boys and they had thrown some off the car and some got off and I did not know whether they were hurt or killed or what, and they told that some of the boys had called up from Stevenson to stop the train there and get us girls off. I told them something else about what happened in the car. I told them the negroes had ravished us.

Recross-examination:

The boys put up the pistols and the knives just before the train stopped at Paint Rock. They did not put them up until the other boys were through with having intercourse with us. They sat there until the last one had, just one after the other. No boy had intercourse with me over once. Just before the train got to Paint Rock, they put up the knives and pistols. They had their knives and pistols on them when they stopped the train at Paint Rock. I put my overalls back on then. I put my overalls on and helped the other girl put hers on. Both of us climbed off the gondola. I was pretty much alarmed about this fight between the negro boys and the white boys. I had traveled with the white boys from Gadsden to Chattanooga, that is, there were white boys on the train, and also from Chattanooga down to Paint Rock. I was very much alarmed about the white boys when the fight started between the

white boys and negroes. I was excited and worked up over it. I did not know whether the white boys had been killed or not when they took me off the train. My mother lives at Huntsville. I don't know where my father lives. I don't know about my father. I intended getting off the train at Huntsville. I was going back down to Huntsville

Redirect examination:

When I went from Huntsville to Chattanooga there were none of these white boys along with me. I first saw these white boys that had the fight with the negroes when they got on the oil tank after the train pulled out of Chattanooga. There was nobody along with Victoria Price and myself when we went to Chattanooga; just we two girls. I saw some boys on the train, but they were not the same boys that came back. I was not acquainted with the boys that went up with us. They just happened to be on the train. These boys that went up with us were not on the train with either Victoria Price or myself.

[fol. 41] LUTHER MORRIS, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama, in this County. Along about the 25th of March, when it is said these defendants were taken off a freight train at Paint Rock, I was about a mile and a half this side of Stevenson that day. I saw a freight train coming toward Scottsboro.

I observed it between twelve and one o'clock. I was on the place at home. I own land on each side of the railroad. I was up in the barn loft. I was about thirty yards away when the train past. I saw a bunch of negroes put off five white men and take charge of two girls. I saw between eight and ten negroes, and they put five white men off the train, made them get off the train. They did not throw them off; they just overpowered them and made them get off. I saw five white men get off that train along there. I did not hear any pistol shots. The train was making so much racket, I could not hear. I figure that the train was making between thirty-five and forty miles an hour. I

saw those white men get off or fall off the train. I guess I observed that and could see that train there for about four hundred yards. I was there in thirty yards of the track. The kind of car on the train they were getting off was a coal car, or gravel car, you might call it.

Cross-examination:

I could hear the racket and the fight between the white boys and the negroes. The white boys were not yelling and screaming. The negroes did not make any noise; they were just putting the boys off; they were making them get off, making them jump off. There were five white boys they put off there; that is all I saw. From where I was standing, I figure there was between eight and ten negro boys, the best I could say. I saw two women in the gondola, two white girls. The two white girls were doing their best to jump and the negroes caught these two white girls and they were pulled back down in the car. I was standing above this train so I could get a good view. I saw all of this going on. I don't know exactly how far I was from Paint Rock. It is eighteen miles to Stevenson and I live a mile and a half of Stevenson.

Redirect examination:

I was in the barn loft and could see from the barn loft. I went out to where these boys were, the two that got knocked in the head, but they were hurting so bad they [fol. 42] could not talk. They just said "I am dying." I certainly did notice wounds or bruises about them; one looked like along here somewhere and another one right along in the forehead. They ran off and left me. They would not talk with me. They ran back to Stevenson. I saw five after the train passed. They were not all hurt or bruised; there were only two that I saw hurt.

Recross-examination:

These boys were hurting so bad they would not talk with me; they went on to Stevenson. They went afoot. They were badly hurt. It was a mile and a half to Stevenson. They went on and would not talk to me. All I know about

this is what I saw from my loft, looking over in that gondola car, and I think I saw a plenty.

T. L. DOBBINS, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live up this side of Stevenson. I live right on the Southern Railroad. I saw the negroes passing by the day it is said some negroes were taken off the train at Paint Rock, going toward Huntsville. I reckon it was between eleven and twelve o'clock or between twelve and one o'clock, when I saw the train pass by up there. I was in the house when it passed, maybe thirty or forty steps from the track. In the house I could not see more than fifty yards up and down the track, but on the porch I can see a quarter of a mile. I was in the house. I did not see anybody get off the train. As well as I recollect, there were three darkies in a box car, standing in the door, in front of this gondola where these people were scuffling. A boy of mine called attention and hollered at me and as I came to the door, I saw them scuffling and it ran in behind the barn from the door from me. They looked like negroes to me, that I saw scuffling. They were in this gondola where they were scuffling.

Cross-examination:

I live at Stevenson. All I saw was just some scuffling between some men there. I did not see any guns. That was right this side of Stevenson, about a mile and a half or two miles. I just saw some negroes fighting in a gondola car. I could not tell what they were doing. I thought [fol. 43] maybe it was the brakeman trying to put them off. All I know about it is that it looked like there was a sort of a fight going on.

LEE ALLEN, a witness for the State, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, I was along the right-of-way of the Southern Railway on the day it is said the negroes were taken off a freight train near Paint Rock, the train going

toward Huntsville. On that day I was up this side of Stevenson when the freight train passed going toward Huntsville. It was along about 12:30 or one o'clock. I was about two hundred yards from the track. As the train went by I saw a bunch of people in a car. They were negroes; they were all of them in the car. I saw them striking this way (illustrating) and about that time I saw someone go out over the top of the car, on the other side of the car from me. That was a coal car, commonly called a gondola car. After the train passed, I saw two men coming back up the track. They were white men, with blood running down their faces. They were walking along the railroad then, going back up the road in haste toward Stevenson.

At this point the State rested its case.

DEFENDANTS' EVIDENCE

CHARLEY WEEMS, one of the defendants, having been duly sworn, testified as a witness in his own behalf as follows:

My name is Charley Weems. I was on this freight train running between Stevenson and Paint Rock on March 25th. There were twelve of us negro boys on that train. There were seven white boys on there. I first seen the white boys when we left Chattanooga. I did not see the girls on the train till we got to Paint Rock. I got on the side of a box car at Chattanooga and crawled over to an oil tank. When the train slowed up at Main Street I came across the box car to the oil tank. When we got up to that next little town above Chattanooga, I left the oil tank and went to the gondola. I don't know what town it was. I had been out of Chattanooga about an hour or a little over. The fight between the white boys and the negroes started down here at Stevenson, after we left Stevenson. The white boys were in the gondola. The negroes got in the gondola directly [fol. 44] after we left Stevenson. Haywood Patterson and that long yellow boy back there first went in the gondola. Three of us went over in the gondola. What prompted me to go in the gondola, Haywood Patterson had a pistol and he said "Come on and help me get the white boys off; if

you don't I am going to shoot you off." I don't know whether any of the negro-s had been quarreling. They were not on the train where I was. I was one of the three boys that went in the gondola first. I was behind Haywood Patterson. Haywood Patterson just walked up and hit this white fellow over the head with a pistol. I was not doing anything at all. I didn't have a pocket knife or nothing. I just told the white boys to get off. A fight did not start. These white boys did not fight at all; they just run and tried to get off the train. About five got off the train. I could not tell how many stayed on the train. Some of them went off toward the engine. I don't know where the girls were. I didn't see the girls. I never did see the girls. I got off the train when we got to Paint Rock. I got off the train. Five boys got off the train in all. The five were me and Clarence Norris, Ozie Powell, Willie Roberson and that boy back there, Olen Montgomery, that blind boy. I had known these negroes that were with me since we left Atlanta; we left Atlanta together. I did not know the rest until we got on the road. The first time I saw these girls was when we got to Paint Rock. They were getting off the train. They got off the gondola. I wasn't in the gondola they were on. I wasn't in that gondola at all. I had not been in that particular car, not where they were. I did not see the girls until they were getting off the gondola. I don't know how many gondolas were on that train; five or six on that train along in line together; some were, and some on the other side of box cars; a box car was between them. I had nothing to do with the girls at all. If anybody had anything to do with the girls, I don't know nothing about it. I have been in trouble in Atlanta one time, about a fight. That is the only time I have been arrested. I worked with W. B. Shepherd on a grading camp. I have been working for him about three years. My home is in Atlanta, Ga. My parents are not living. My mother and father are dead. I stayed at home and went to the country and worked with my aunt before I went to work for Shepherd.

Cross-examination:

My name is Charley Weems. I got on that train at Chattanooga. I was going to Memphis, Tennessee. I got on between [fol. 45] a box car down at the bridge. I got on top when

it got to Main Street and walked over and got down on an oil tank. When the train pulled out of Main Street, I saw some girls on that tank car. I wasn't on a gondola. I was on an oil tank, I got over in the gondola down at Stevenson. I walked over the top of the gondola. Some white fellows were in the gondola. There was gravel in that gondola. These white boys were in the car when I got in it at Stevenson. I did not jump off the box car into the gondola. I climbed down and stepped in. The car had steps on the end of it. Haywood Patterson told me to go in there and help throw them white fellows off; if I didn't he was going to shoot me off. That is Patterson (indicating). He told me why he wanted me to go along. He wanted to go in there and help throw the white fellows off. He said he was throwing them off because they had been trying to run over him down in the oil tank. Haywood Patterson had a pistol. I did not have a pistol. I saw his pistol. He went back along the train to call me to help throw the boys off. There were seven white boys on the train. We had come to Stevenson from Chattanooga before we got in there. I could not see all over the gondola and there could not have been anybody hid in there where I could not have seen them. I did not see those two girls in there. The boys were lying right in the center of the gondola car. I did not see the girls at no time until I got to Paint Rock. Five boys were put off. Haywood Patterson hit one; I don't know his name, but he had on a big wide belt, and he hit him across the head with a pistol. When he hit him he did not catch hold of him. He didn't grab him. This white fellow just jumped off and said "Yes, we will get off." He did not fight because the white fellow got scared of the pistol and climbed down on the side of the car and jumped off. The other fellow jumped off. They all jumped off but one. One little white boy stayed in the car and Patterson said to put him off and he done put his foot down on the side and another boy had a big knife around his throat. He did not jump off. He begged for mercy and I reached down and pulled him back on the box car. I never saw these girls at all and never had anything to do with them; never had my hands on them. I could tell the girls from the boys. Just because they had on overalls, it would change their looks with me. There wasn't a soul in that car with me and Patterson except these negroes and one white boy.

There were four of us colored boys back there in a box car where I was. The other five were back in the car with this other white boy, talking. Some of them left there from the [fol. 46] time I left Chattanooga until I got to Paint Rock. They left down here after we got through this next town above here, Stevenson. Five boys got off there. There were nine on the train when we got to Paint Rock. I told the jury a while ago that there was four of us boys together when we left Chattanooga. I did not tell the jury a while ago that there was only twelve negroes when we started from Chattanooga. I did not say how many negroes was on the train at all; there was fourteen on the train. I counted them five that got off did not have nothing to do with these people at all. Those five got off between here and Stevenson. I did not know them, and don't know who they were. When I got to Paint Rock, I was up about that car where them boys were talking to them white fellows. I wasn't in the gondola car when I got there. I don't know where I was when I passed this place. I never saw the girls until I got to Paint Rock. I am the one being tried with Clarence Norris. He was there with me. He was in the gondola with me. We were sitting down. Me and him and Ozie Powell and Willie Roberson and Olen Montgomery were in there. We were all in the gondola when we got to Paint Rock. I never saw no girls in this gondola we were in at all. I first saw the girls when they came toting them through Paint Rock. They had the oldest girl in a chair coming through Paint Rock. She did not get out of the gondola I got out of. I don't know whether she got of- a gondola or not. The first I saw of either one of the girls they were bringing the oldest girl up in a chair. I told that to the officers when I was arrested. I told them I did not have anything to do with either one of the women. Nobody made any threats against me. Nobody made me talk. Nobody made any promise to get me to talk. I did not tell the officers there at Paint Rock that I saw these other boys rape those girls and I did not have anything to do with it. I told them he had a pistol; that is all I told them, that Haywood Patterson had the pistol. My friend and I being tried did not have a pistol. I did not have a pistol or any pocket knife. I had nothing to do with the raping of the girls. I never saw anything done to the girls.

CLARENCE NORRIS, one of the defendants, having been duly sworn, testified as a witness in his own behalf as follows:

[fol. 47] Direct examination:

I am one of the defendants. My home is in Atlanta. I have been living there about five years. I have never been in any trouble. What I was doing up here in this section of the country I was going down to Sheffield to my aunt's. I got on this train at Chattanooga. Four of us caught the train together. The boy that just testified was one of them. I have forgotten the boys name yonder; he is right yonder (indicating). I got on an oil tank. I don't know how far I remained on that oil tank; we were about four or five miles, I guess. I went across from the oil tank to a flat of cross-ties. I went to go and sit down. I went to go by myself. I was the only one there. I did not leave that car. I stayed there. I was not in the gondola when this fight occurred. I seen two boys on the flat where I was on the cross-ties. I did not have any trouble with them. I did not have a pistol or a knife. I did not leave that car I was riding on. I did not leave it at Paint Rock. I don't know who took me off the train at Paint Rock, there was so many there. I remember getting off. I got off at Paint Rock, I reckon. I did not just leave the train. They threw guns on me, the officers did. I had not been engaged in the fight at all but I seen the fight. The fight took place in the gondola car. Every one of them colored boys was fighting. They were all fighting. That one yonder, Haywood Patterson, started the fight. He came across the flat car where I was on the crossties; him and the rest of them colored boys come across that car and said he was going over there to run the white boys off and going to have something to do with them white girls. I saw this boy that just testified before me on the stand. They came across where I was sitting down at that time. They knew the girls were on the train and the white boys with the girls on the gondola car. I had not seen the girls. I hadn't seen them till I got off this flat car I was sitting in, and seen these boys fall off the train; after he said he was going to run them off I seen them fall off the train and I asked two white boys what they were getting off the train for and he told me he did not know, and I got up on the

train to see if he was putting them off, and sure enough I got up on the box car and looked where they were and the whole crowd was putting the white boys off. One had a knife around the other's kneck and trying to push him off, and he wouldn't get off and the other boy took him and pulled him back up in the car. I did not have anything to [fol. 48] do with the girls. I did not have my hand on any of them. I did not hold them or anything of that sort. When I first saw the girls the train was away up the road. When I saw the girls was when I got up on the box car and looked over where he was putting the white boys off.

Cross-examination:

My name is Clarence Norris. I did not get into that gondola at all. I just looked in. This Weems I was speaking about here is not my friend. I knew him. I saw him over in the gondola and I saw the girls in there, but I did not go in there. I saw that negro in there with those girls. I seen every one of them have something to do with those girls after they put the white boys off the train. After they put the white boys off I was sitting up on the box car and I saw every one have something to do with those girls. I was sitting on top of the box car. I saw that negro just on the stand, Weems, rape one of those girls. I saw that myself. When the officers searched me they did not find anything on me. They did not find a pearl-handled knife. They did not find a pearl-handled knife on me. I did not have a knife or pistol. I did not go down in the car and I did not have my hands on the girls at all, but I saw that one rape her. They all raped her, everyone of them. There wasn't anyone holding the girls legs when Weems raped her, as far as I saw. The other boy sitting yonder had a knife around her throat, that one sitting on the end behind the little boy. I don't know what his name is, but he is the one that had the knife. I did not see the little one hold of her legs while this one was raping her. I did not see anybody holding her legs. I don't know who pulled off her overalls. The girls were lying down when I got up on the box car. This big one did not have a knife on her throat. That little boy sitting behind yonder—I don't know his name—is the one that had a knife around her neck, making her lie down while the others raped her.

I didn't see any of the negroes take her overalls off. The girls were lying down when I got up on the box car. I saw the overalls lying in the car. I did not see any step-ins. I did not get down in the gondola, never did get down in there. When the officers arrested me I was on a flat car of crossties where two white boys were. Some of the white boys are here in jail. They said they had seven white boys down there; I don't know whether it is them or not, but we were in Paint Rock when they took us off the train. I was not down in the gondola. I did not take a knife off one of the girls and put it in my pocket. The [fol. 49] officers did not take that knife off of me when he arrested me. I did not have any knife. When I saw these girls they had on overalls. I don't know whether they had any coat on or not. The overalls had bibbs on them, like mine, running up to the neck. I don't know what was under those overalls.

Redirect examination:

I don't know whether they had on dresses under the overalls or not. I know what step-ins are. Step-ins are what women put on under their clothes. I don't know what they are. They are something. I did not see any step-ins these women had. They had their overalls off when I got on the box car. I don't know who took them off. They were lying down when I got up on the box car. I don't know whether they had on clothes or not. I was standing looking at them but I could not tell whether the girls had clothes on or not. I could see their faces but I could not see their bodies. I don't know whether they had on stockings. I did not see that much of them. Everyone that was in that gondola car had something to do with those girls, all eight of them, but I did not. I did not make a statement a few minutes ago to Judge Moody and Mr. Roddy that that boy just on the stand did not have anything to do with them. I did not say that boy never. I said I never had anything to do with them. I did not tell Judge Moody and Mr. Roddy that he didn't. I say now that he did; he had something to do with them, but I did not have anything to do with them. I told Mr. Roddy that. I told Mr. Roddy I did not have anything to do with them and the rest of them did have something to do with them. I

did not say this man just on the stand did not have anything to do with them. I pointed out some of them and did not have anything to do with them.

I did not point them all out because all were trying to talk. The boy just on the stand had something to do with them. I could tell whether the girls had on any clothing at all. When one of those negroes would get off, I could tell whether she had on any clothes. I don't know a thing about her clothes at all. I just seen the overalls lying down in the gondola car. I don't know who took the overalls off of them. When I got up on the box car looking down in there, they were on the girls. I don't know who took them off.

Recross-examination:

I am positive and I am swearing now. I held up my right hand to tell the truth, and I am telling the truth. That negro Weems that was on the witness stand did ravish that girl. He was on her. I have never seen this [fol. 50] knife before, which is exhibited to me by counsel for the State. I have not had any knife at all. The officer did not get this knife off me. I had nothing to do with it and I don't know anything about it.

At this point the defendants rested their case.

State's Rebuttal Evidence

Arthur Woodall, a witness for the State, in rebuttal, having been duly sworn, testified as follows:

I am deputy sheriff of this county. I was down there the evening those darkies were brought to jail. I was assisting the Sheriff, as his deputy; the Sheriff wasn't there. I searched all of these darkies. I don't know the negro Norris, sitting over yonder is one of the negroes. I don't know his name. He gave me his name as Norris. I took the names down. I took this knife, exhibited to me by counsel for the State, off that negro there, that big lipped one. That is the knife I took off of him.

Cross-examination:

It was day time when I took it off him, about four or four-thirty o'clock. These negro boys were brought from

Paint Rock and I came from Stevenson. I brought the white boys down here. I found this knife on that negro right there (indicating).

VICTORIA PRICE, a witness for the State, in rebuttal, having been duly sworn, testified as follows:

Direct examination:

I know this knife, exhibited to me by counsel for the State. That is my knife. I had it on my person at the time of this trouble on the train. I did not lose it. It was taken off me. That Norris, the smallest one, that one sitting there, took it off me. He also took $1.50 in money and a pocket handkerchief.

The foregoing is all the evidence offered on the trial of this cause.

After both sides had closed their testimony, defendants' counsel stated to the court that they did not care to argue the case to the jury, but counsel for the State stated to the court that they did wish to argue the case to the jury, and one of counsel for the state proceeded to argue the case to [fol. 51] the jury. At the conclusion of said argument of counsel for the state to the jury counsel for defendants stated that they still did not wish to argue the case to the jury, and objected separately and severally on behalf of the defendants to any further argument of the case to the jury by counsel for the State, on the grounds that after counsel for defendants had declined to argue the case to the jury any further argument on behalf of counsel for the State to the jury would be contrary to the law and the rules of practice of this court, and would be harmful and prejudicial to the interest of the defendants. The court overruled said objection and permitted counsel for the State to further argue the case to the jury, to which action of the court defendants separately and severally reserved an exception.

COURT'S ORAL CHARGE TO JURY

The court thereupon charged the jury orally as follows:

Gentlemen of the jury, let me have your attention for a few moments and then you will have this case. The defendants in this case, Charlie Weems, alias Charles Weems, and Clarence Norris are indicted jointly with several other defendants charged with the offense of rape under our statute. Only the defendants Norris and Weems are on trial before you and you only consider, of course, their case in your consideration now.

Gentlemen of the jury, the grand jury of this county has indicted these two defendants, together with several others, for the crime of rape under our statute. Rape, gentlemen of the jury, as defined by the Code of Alabama, is "Proof of actual penetration is sufficient when the act is shown to have been committed forcibly and against the consent of the person on whom the offense was committed." The State insists that these defendants together in one act, one assisting the other while the act was committed by force and against the consent of one Victoria Price, had intercourse with her somewhere up here in this county. That is the charge set out and made to this indictment here by the grand jury.

In answer to this charge, gentlemen of the jury, the defendants each plead not guilty. That puts the burden of proof on the State in this case as in all other cases to satisfy you from the testimony beyond a reasonable doubt of the guilt of these defendants before you can convict them. They come into the court with the presumption of innocence in their favor and that presumption remains with them throughout the trial of the case till the testimony convinces the jury of their guilt beyond a reasonable doubt. [fol. 52] Gentlemen of the jury, under our law, and it is proper that I call your attention to it, the indictment by implication also covers the lesser degree of criminal assult in cases of this kind, that is to say, an assault with intent to rape and an assault and battery. If you are not convinced beyond a reasonable doubt of the guilt of the defendants or either of them of the higher offense, then they may be convicted, if you are convinced beyond a reasonable doubt, of the lesser offense. The law, gentlemen of the jury,

is short in regard to charges of this kind, it is simple, and the case comes to you as jurors under your oaths to settle this case according to law as I have endeavored to give you in charge and the evidence you have heard here from the witness stand. You are the sole judges of the testimony and of the weight you give the testimony of each party concerned, the prosecutrix and the witnesses testifying and of the defendants. It is improper for me to say what I think or to intimate what I might think of the testimony of the parties or witnesses or any of them concerned in it. That is a matter for you and of which you are the sole judges and for you to determine under your oaths as jurors.

Take this case in a few minutes and try it under your oaths and let that guide you in the performance of your duty when you go to your jury room and from the testimony and the facts you have heard endeavor to give these defendants on one side and the State on the other a fair and impartial trial. You have a right to look at the testimony of the witnesses and the parties in the light of their interest, if they are interested, and you may weight their testimony according to their reason for knowing or not knowing the matters about which they testify, and from the whole thing ferret it out, weigh it, revolve it in your minds and see what is just and right between the State on one side and the defendants on the other.

As I said to you a while ago, gentlemen of the jury, if you are convinced of the defendants' guilt beyond a reasonable doubt, then you fix the punishment in the higher offense. If they are guilty as charged in the indictment of rape, gentlemen of the jury, the punishment is by death or imprisonment in the penitentiary for not less than ten years. If they are not guilty of the higher offense or either of them and you are convinced of the guilt of the lower offense as outlined to you a while ago, then the punishment is not with you, but the guilt or innocence is only what you pass on, the punishment is left with the court. The punishment for an assault, gentlemen of the jury, is a fine of not more than [fol. 53] $500.00. If, however, you reach the conclusion that one defendant is guilty of the higher offense and the other not guilty of the higher offense or some other offense, it would be necessary for you to so state in your verdict.

The State in this case, gentlemen of the jury, insists that one of the defendants actually had intercourse forcibly and

against the consent of this prosecuting witness, Victoria Price, and that the other held the prosecutrix or this girl while the other was committing the offense of rape. What has that to do with the case? It means this, gentlemen of the jury: Under our law they both may be guilty of the higher offense of rape, though only one performed the act of criminal knowledge, had carnal knowledge forcibly against the will of this prosecutrix, if the other was present aiding and assisting in the forcible assault made by the other party. In other words, it would not be necessary for both to have had intercourse forcibly and against the consent of this prosecuting witness at that time and place for both to be guilty; if one held knife or held the girl by the throat or mouth as the State insists, then they would, of course, be equally guilty. Any person who aids or assists another in the commission of an offense like this, or any other offense, one is as guilty as the other, though the real act may only be performed by one. How that is, gentlemen of the jury, is for you to say. If one of the defendants was only present and had nothing to do with the commission of the crime and the other committed it, then, of course, only one would be guilty. How that was, gentlemen of the jury, they both plead not guilty, and that is for you to say. And in order to convict these defendants, you must be convinced of their guilt beyond a reasonable doubt.

Gentlemen of the jury, it is necessary for me to give the forms of several verdicts in this case under the law. If the defendants are guilty of the higher offense, this is the form of your verdict, "We, the jury, find the defendants guilty of rape as charged in the indictment, and we fix their punishment at death," or at imprisonment for any number of years, not less than ten. If they are not guilty of the higher offense but are guilty of an assault with intent to rape, then this is the form of your verdict, "We, the jury, find the defendants guilty of an assault with intent to rape as charged in the indictment," and you don't fix the punishment. For the lower offense it is, "We the jury, find the defendants guilty of an assault and we assess a fine against them for so much," not more than $500.00. If they are not guilty, then it is, "We, the jury, find the defendants not guilty."

[fol. 54] But, however, gentlemen of the jury, if you should find the defendants guilty of different degrees, that is,

separate, one of the higher and one of the lower, then it is necessary for you to so state in your verdict, "We, the jury, find the defendant Charley Weems guilty of rape as charged in the indictment" and fix his punishment, and we find the defendant Norris guilty of some other offense, if you should find him guilty, then your verdict would be separate. If you find them guilty of the same offense then it is "We, the jury, find the defendants guilty of so and so as charged in the indictment." I was just trying to make that clear to you if you were to give them different punishment for either; if both are not the same, then it would be necessary for you to so state in your verdict.

It is necessary that I outline, gentlemen of the jury, all these different elements of assault and assault with intent to ravish as well as the law of rape. The law makes it my duty to outline them to you and to give you the different verdicts and it is for you to say what the defendants are guilty of and whether they are guilty of anything or not, and as I said to you, you must be convinced beyond a reasonable doubt.

Thereupon, on the 9th day of April, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court a motion to set aside the verdict and to grant the defendants a new trial, which said motion is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

VS.

CHARLIE WEEMS, CLARENCE NORRIS

MOTION FOR NEW TRIAL

Comes the defendants and moves the court to set aside the verdict of the conviction in this cause for that:

1st. The court was in error in refusing to grant the petition of defendants asking for a change of venue and removing this cause to another county.

2nd. The defendants allege that the court was in error in refusing to allow him a special jury to be drawn and summons on his request for his trial.

Stephen R. Roddy, Milo Moody, Attorneys for Defts.

[File endorsement omitted.]

[fol. 55] On the 6th day of May, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court an amendment to the foregoing motion for new trial, which said amended motion is in words and figures as follows, to-wit:

AMENDED MOTION FOR NEW TRIAL

Comes the defendants, Charley Weems and Clarence Norris, by permission of the court, and amends their motion for a new trial heretofore filed in the cause of the State of Alabama vs. Charley Weems and Clarence Norris, and moves the court to set aside the verdict and judgment rendered in this cause on the 7th day of April, 1931, and to grant these defendants a new trial and for grounds of said motion sets down and assigns the following reasons and causes separately and severally.

I. The court was in error in refusing to grant the petition and motion of the defendants, Charley Weems and Clarence Norris for a change of venue and in failing to enter an order removing the trial of this cause from Jackson County to some other county in the State of Alabama.

II. The court was in error in failing and refusing to allow the defendants a special jury, or special venire to be summoned and drawn at their request in this case on account of local prejudice and because of publications which had been made through the press in Jackson County, Alabama, and in other counties where the newspapers were circulated in Jackson County.

III. A new trial should be granted because the court erred in not questioning and interrogating the members of the jury who tried this case, as to whether or not they entertained racial prejudice against the defendants because they were negroes.

IV. A new trial should be granted because public excitement was so high that when these defendants were arrested that a large crowd gathered at Paint Rock, Alabama, and threats of violence and lynching was made against the defendants to such an extent that an appeal was made to the Governor of the State of Alabama to send state troops to Scottsboro for protection of the defendants, and state troops were sent to Scottsboro and the defendants guarded by state troops from Scottsboro jail to Gadsden, Alabama, where they were detained in jail until the time of the trial and were escorted by an escort of troops from Gadsden, Alabama, to Scottsboro, Alabama, and guarded during the trial by more than one hundred troops and by six or eight machine guns and weapons used in military warfare during the trial.

[fol. 56] V. A new trial should be granted because notwithstanding the excitement throughout the county of Jackson and adjacent counties in that section of Alabama, hundreds of people visited Scottsboro who did not live in Jackson County, but some in other counties and some in the State of Georgia and some from the State of Tennessee, and this crowd that visited Scottsboro were all unfriendly to the defendants. No friends appeared during the trial to offer the defendants comfort, advice, or financial aid, and they were held in jail without bond and without an opportunity to see their kinsfolk or friends, or prepare their case for trial.

VI. A new trial should be granted because of the state of excitement in Scottsboro, and when the jury reported in the case of these defendants, there was a public demonstration by the clapping of hands and hollowing in the court room in the court house where these defendants were tried as a result of the verdict of the jury imposing the death sentence.

VII. A new trial should be granted because of error in the part of the court in refusing to permit the defendant's counsel to cross-examine and interrogate the prosecutors as to their general reputation and character.

VIII. A new trial should be granted Charley Weems because he was tried with Clarence Norris when there was

hostilities between he and Norris thought that it would benefit Norris for him to say that Charley Weems was guilty of one of the charges, or the evidence tends to the inference that there was hostilities between these defendants.

IX. A new trial should be granted Clarence Norris because of antagonistic interest on the part of Charley Weems all of which is developed in the redirect examination of Clarence Norris in his examination on the trial of this cause tending to show that he made a statement before going on the stand to the attorneys and after going on the stand, he repudiated his statement to them which prejudiced his case in the mind of the jury and about a matter which was improper to be brought in the trial against Norris himself. The question of guilt or innocence of Weems was used to the prejudice of Norris, when Norris ought to have been tried by himself and tried alone on the evidence against him.

X. A new trial should be granted because the jurors to try the case against these two defendants were permitted to sit in the court room and to hear the discussion between the court and counsel preliminary to the opening of the trial and to hear the evidence introduced by the defendants on their application for a change of venue.

[fol. 57] XI. A new trial should be granted these defendants because their constitutional rights as guaranteed by Article 14, Section 1, of the Amendment to the Constitution of the United States which provides, "That no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law," and the rights of these defendants were violated under the Constitution of the United States for the following reasons:

(a) They were arrested and placed in jail and had no fair chance to employ counsel or to communicate with their families or friends;

(b) They were placed in a jail in a distant city from their homes where their kinsfolk were afraid to visit them on account of fear or personal violence;

(c) Because they were unacquainted with any attorney or attorneys in that neighborhood and unable to make financial arrangements to employ an attorney to represent them;

(d) Because there was not sufficient time between the time they were arrested and the time of their trial to properly prepare the case for trial;

(e) Because of racial prejudice prevailing in the county where the trial was held, they being negroes or citizens of African descent;

(f) Because there was a demonstration in the court room and out on the streets outside of the court room when the jury reported its verdict against these defendants;

(g) Because of the ignorance of these defendants and their immature years they did not know their rights under the law and did not know how to prepare for a trial and did not know how to get witnesses to the court and were held in jail without bond;

(h) Because they were frightened, intimidated and had been threatened and thought their lives were in peril and they had no money with which to employ counsel, or to send for friends, and they were utterly helpless;

(i) Because they were not guilty of the charges preferred against them and should have been granted a separate trial.

XII. A new trial should be granted because the constitutional rights of these defendants were violated for the reason that Article 1, Section 6, of the Constitution of the State of Alabama, which provides, "That in all criminal prosecutions, the accused has a right to be heard by him- [fol. 58] self and counsel * * * and he shall not be deprived of life, liberty, or property except by due process of law," and the trial of these defendants were conducted in such a manner as to be violative of the due process of law clause of the Constitution of the State of Alabama, for the reasons set out in this motion and for the reasons appearing in the transcript of the testimony of the trial of this case.

XIII. A new trial should be granted because under the laws of the State of Alabama, and under the laws of the United States, the defendants were not given a fair and impartial trial as contemplated by the laws of the State of Alabama and by the laws of the United States.

XIV. A new trial should be granted because the case should have been continued on application made by counsel for the defendants at the time of the trial, for the reason the public excitement was prevailing in the county against the defendants, and because the defendants had not had reasonable time to prepare their defense for trial, and because the necessity for troops rendered it impossible to keep inviolable the precincts of the prisoners' dock, the counsel's place, the witness chair, the jury's seats and the intervening space within the court house and in the surroundings free from hostility and unfriendly invasion or intrusion, because the accused ought not to be terrified on the trial, or his counsel confused in making his defense, lest the witness testify falsely under fear of inducement, or lest the jury be overawed, or their minds influenced by an atmosphere surcharged with hostility or partiality, and this trial was surcharged with hostility towards these defendants and violated the Constitution of the State of Alabama.

XV. A new trial should be granted because there is no evidence to support the verdict of the jury against the defendants, and because the weight of the legal evidence preponderates in their favor.

G. W. Chamlee, Attorney.

[File endorsement omitted.]

[fol. 59] EXHIBIT TO AMEND MOTION FOR A NEW TRIAL

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSION 1931

No. 2402

STATE OF ALABAMA

vs.

CHARLEY WEEMS and CLARENCE NORRIS, alias CLARENCE MORRIS

Section 12 Above

Appearances:

H. G. Bailey and Proctor and Snodgrass, Attorneys for State.

Stephen W. Roddy and Milo Moody, Attorneys for Defendants.

This cause coming on to be heard was tried on this 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury, when the following proceedings were had and done, to-wit:

The Court: All right, the first case Solicitor is the case of State vs. Haywood Patterson, et als., what says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants but people who are interested in them have spoken to me about it and as Your Honor knows I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that, the only thing I want to know is, whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them that is the only thing I am interested in—I would like to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar your Honor appoints; on account of friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel.

Mr. Roddy: I would not like for Your Honor to rule me out of it——

[fol. 60] The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances, all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel; is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel, but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

Mr. Roddy: I just appear through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under your Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet, of course if your Honor proposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case, they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course if they have counsel I don't see the necessity of the court appointing anybody, if they haven't counsel, of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar [fol. 61] with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and certainly I haven't any money to pay them and nobody I am interested in had me come down here and pay counsel. If they should do it I would be glad to turn it over to counsel, but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of looking at it and according to my lack of preparation of it and not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it, I don't know a thing about it. I am here just through the courtesy of Your Honor, if your Honor will extend to me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court and not to the defendants. I could not take the case for a fee because I am not practicing in the general court to any extent. I am a member of the bar and I could not refuse to

do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath. That is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants I don't think I ought to appoint counsel. If he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them I will be glad to do it, I am interested to that extent.

The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment; of course I don't mean to cut off your assistance in any way—well, gentlemen, I think you understand it.

[fol. 62] Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it under the circumstances.

The Court: All right, all the lawyers that will, of course, I would not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar, I will go ahead and help do anything I can do.

The Court: All right."

On the 6th day of May, 1931, the defendants, separately and severally, filed in said cause a petition, which said petition is in words and figures as follows, to-wit:

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et al., Defendants

PETITION OF CLAUDE PATTERSON ET AL.

"To the Honorable E. A. Hawkins, Judge of the Circuit Court of Jackson County, Alabama:

The petitioners, Claude Patterson, Ada Wright, and Mamie Williams most respectfully show unto the court that

Claude Patterson is the father of Haywood Patterson, and that Ada Wright is the mother of Roy Wright and Andy Wright, and that Mamie Williams is the mother of Eugene Williams and that these petitioners employed George W. Chamlee, attorney-at-law, of Chattanooga, Tennessee, to represent their boys in the case of the State of Alabama vs. Haywood Patterson et al., pending in the Circuit Court of Jackson County, Alabama, and which they desire to be appealed from that court to the Supreme Court of the State of Alabama, in the event a new trial is not granted Haywood Patterson, and if a new trial is granted for him, the petitioners, Ada Wright and Mamie Williams desire that the cases against their boys be appealed to the Supreme Court of the State of Alabama.

Claude Patterson shows unto *to* the Supreme Court that George W. Chamlee had been his attorney in legal matters several years ago and recently in the early part of 1931, Claude Patterson employed Mr. Chamlee as his attorney to defend a case against his son, Julian Patterson of Chattanooga, Tennessee, and that they had made a contract with Mr. Chamlee to represent their boys in these cases at Scottsboro, Alabama, and also on appeal from the case at Scottsboro, Alabama, and that they had not employed any other attorney and they had not authorized any other [fol. 63] attorney to represent them, or to bind them in the premises.

They further show unto the court that since their boys have been arrested that they had only had one opportunity of visiting their boys and that was in the City of Birmingham, Alabama, and that their boys told them that they had signed a request in the form of a contract asking Mr. Chamlee to represent all of them on appeal in their cases, and that all of the defendants in Birmingham jail stated to these petitioners that they had likewise signed such a contract and that they wanted Mr. Chamlee as their counsel, but there was no time on this occasion to make any reasonable investigation of the cases, and the defendants were all in company with each other in their joint cells in jail and no opportunity to write or take notes of what each one had to say about his case and no opportunity for a private conversation whatsoever with the defendants.

Petitioners carried their attorneys with them and was informed that if their attorney had not been with them that

they could not have seen their boys and that they would soon be removed from Birmingham to Kilby Prison at or near Montgomery, Alabama. Petitioners then set about planning to have their attorney visit these defendants at Kilby Prison at Montgomery, Alabama, and on April 29, 1931, their attorney communicated with the warden of Kilby Prison and was informed that no one could see the defendants except upon a written order of this Honorable Court and for them not to come to Montgomery, Alabama, with the expectation of seeing them without an order from this Honorable Court.

Petitioners are advised that important evidence, touching the merits of the cases of these defendants, has been discovered since the trial and that in order for newly discovered evidence to be presented, under the laws of the State of Alabama, that the defendant must make an affidavit or show a good cause why he did not have the evidence on the regular trial and give a meritorious reason for not producing it when he was tried before it would be available on the hearing of a motion for a new trial.

Petitioners further show unto the court that the defendants were arrested on the 25th day of March, 1931, and were indicted in the last days of March, 1931, and the first days of April, 1931, and were put on trial about the 6th, 7th, and 8th and 9th of April, 1931, and that these petitioners were not permitted to see them prior to the time of the trial and they have only seen them one time since the trial. They are advised that under the laws of the State of Ala- [fol. 64] bama that the parents of children under twenty-one years of age, who in company with responsible and reputable counsel, have a lawful right to a conversation with their children separately and apart from other persons, one at a time, for the purpose of preparing cases for trial.

These petitioners have not read the transcripts of the records in these cases and do not know the merits of the testimony introduced on the trial, but have been informed that there was some antagonistic interest involved between certain of the defendants and that separate trials ought to have been had by some of them in order to avoid conflicting interest prejudicing the case or cases against others.

These petitioners are all colored people and they were afraid to visit Scottsboro at the time of the trial and are

afraid to visit Scottsboro now, and if the defendant, Haywood Patterson, has to be brought to court when the motion for a new trial is heard, they would petition the hearing be had at Montgomery, Alabama, or at Kilby Prison, so that no risk of violence would be assumed and that they might attend the hearing in person when the motion for a new trial was heard.

Petitioners further show and represent that they are advised, that in view of new facts and newly discovered evidence, that has been learned of since the trial, that the hearing of a motion for a new trial ought to be continued from May 6, 1931, until some later date, in order to prepare the motion for a new trial to be presented to Your Honor.

Petitioners especially appeal to this Honorable Court to afford them and to their counsel every reasonable opportunity to present such evidence as they may have, or may obtain on the hearing of the motion for a new trial and to afford them an opportunity of presenting additional affidavits from witnesses of whom they have heard, and which said witnessess, one of whom is reported to be at Paint Rock, claims that when Victoria Price first got off the train, she was asked if any of the defendants had done anything to her, and that she said they had not.

Affiants desire to file this petition as parents and next friends of their children, and especially does Claude Patterson desire to file it on behalf of Haywood Patterson, whose motion for a new trial has been set for hearing May 6, 1931, and that as Haywood Patterson is in Kilby Prison and as the keeper of that prison has informed G. W. Chamlee, attorney, that he could only see Haywood Patterson upon a written order from the Judge of the Circuit Court of Jackson County, that this affiant desires to file that affi- [fol. 65] davit, to be considered on the motion as a reason why the affidavit of Haywood Patterson is not filed herein.

Affiant Claude Patterson, further makes oath that Haywood Patterson told him that threats were made against him when he was arrested to lynch him, and that all of the defendants were scared, and if it had not been for the military company coming he believes that all of them would have been killed.

Affiant further stated that Haywood Patterson told him that when the jury reported in the case against Weems

and Norris, and give them a verdict of death, that the people in the Court house clapped their hands and some of them hollored, and a few people left the court house and went outside and in a minute or two the crowd outside commenced holloring and that there was a great demonstration out in the streets of Scottsboro.

Affiant further states that he was afraid to go to Scottsboro and was afraid to go to Gadsden, and that he was utterly helpless, at and before the trial, as far as rendering any assistance to his boy was concerned, or getting him any witnesses.

Ada Wright and Mamie Williams join in this affidavit, and say their boys told them about the demonstration in the court house when Norris and Weems were convicted, and about the threats against their lives.

Affiant further states that they are advised that there are a number of witnesses who saw the train leave Chattanooga and going by Lookout Mountain, where it had to go through the tunnel and that there was about twenty or twenty-five negroes on the train besides the white girls and boys, and that they are advised that the trouble on the train was provoked by the white boys and that after the alleged fight that about ten negro boys got off the train between the time of the alleged fight and the reaching of the station at Paint Rock, and that these parties are evading giving any information about it because they are afraid of the consequences of such disclosures.

Affiants further state that they have talked to a number of people in Chattanooga who claim to know Victoria Price and Ruby Bates and who say that they were women of bad character and reputation and unworthy of belief on their oaths in a court of justice.

They will file with this petition such affidavits as they can get and they hereby make application to this Honorable Court for a permission to file other affidavits, including affidavits of the defendants, in support of the motion for a new trial in the case against Haywood Patterson and such other evidence as they may be able to obtain material thereto.

[fol. 66] The premises considered, the petitioners pray that this Honorable Court will make an order addressed to the Warden of the State Prison of the State of Alabama at Kilby Prison at Montgomery, Alabama, directing or

permitting that counsel for Haywood Patterson, et al., be permitted to confer with them in private so as to prepare their legal evidence in the motion for a new trial of Haywood Patterson, and for the appeal of the cases against the other defendants who have been tried.

II

That an order be made authorizing the Warden of Kilby Prison to permit the parents and relatives of the defendants to see the defendants in the presence of the Deputy Warden, or guards, such as may be provided by the rules of the prison, so that the petitioners will not be denied the right to visit their children while they are confined in Kilby Prison awaiting the execution of the death sentence.

III

That the hearing of the motion for a new trial of Haywood Patterson set for May 6th, 1931, at Scottsboro, Alabama, be continued for thirty days, or for some reasonable time, and that it be heard at Montgomery, Alabama, or if the defendant is not required to be present at the hearing, that he be granted time to file additional affidavits while the State is making its reply to such as he has filed.

(Signed) G. W. Chamlee, Attorneys.

Duly sworn to by Claude Patterson et al. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 67] On the 19th day of May, 1931, the defendants separately and severally filed in said cause, in support of their motion for new trial, the following affidavits:

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402 and 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery, Eugene Williams

AFFIDAVIT- OF HAYWOOD PATTERSON, CLARENCE NORRIS, CHARLIE WEEMS, OZIE POWELL, WILLIE ROBERTSON, ANDY WRIGHT, OLEN MONTGOMERY, AND EUGENE WILLIAMS

The undersigned affiants make oath in due form of law that they were defendants in the above-styled cause, tried at the special session of the Circuit Court of Jackson County, in April, 1931, at Scottsboro, Alabama. Affiants further state that when the court was organized and their cases called for trial, that that did not know who would be their counsel and that they had been in jail ever since they were arrested, March 25, 1931, and had no opportunity to employ counsel and no money with which to pay them and had no chance to confer with their parents, kinsfolks or friends and had no chance to procure witnesses and no opportunity to make bond or to communicate with friends on the outside of the jail.

They further show that there was a discussion between the trial judge and Mr. S. R. Roddy and Mr. Milo Moody and some other attorneys about the cases of these defendants and a copy of that discussion taken from the official record will be filed and marked Exhibit #1 and made a part of this affidavit as fully as if copied and set out herein.

That the case against Clarence Norris and Charlie Weems was tried first and prior to the trial that the Governor of the State of Alabama had provided military forces [fol. 68] with 107 men and officers with six or eight machine guns and rifles commonly used in military warefare to guard the court house and jail and to guard these defendants, prior and during the trial and these military officers had surrounded the courthouse and were keeping the hostile mob or at least keeping away from the courthouse persons that had no business in the courthouse and who might wish to do violence to the affiant or some one of the defendants and while these guards were on duty, the case against Clarence Norris and Charlie Weems was tried and there was a great excitement prevailing throughout the county and in Scottsboro at the time and when the jury reported in this case, the case against Haywood Patterson had been started and his jury was in the jury room adjoining the court room when the jury in the Clarence Norris and Charlie Weems case made its report imposing death penalty, and there-

upon there was a demonstration in the courthouse by citizens clapping their hands and hollowing and shouting and soon thereafter a demonstration broke out on the streets of Scottsboro and not long thereafter the Hosiery Mill band came into the business district apparently celebrating the victory of the State and paraded through the public streets and along in front of the courthouse making music for the entertainment of the crowds and at a time when the whole atmosphere was surcharged with excitement and this demonstration was carried on in the presence and hearing of jurors who had to try the third case composed of Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams and the excitement which had been produced by the seriousness and enormity of the charge made against the defendants and added to this the newspapers and press circulated stories through Jackson County which were generally read and accepted as the facts, when in truth these stories were, many of them, utterly untrue and when these defendants had no newspaper to print anything for them and when they had no attorney to write or publish anything on their side or in their defense, or showing that they were innocent and why their identity could be easily mistaken, but notwithstanding these disabilities and these unfortunate circumstances there was a hostile demonstration in the court room and a hostile demonstration through the streets and on the sidewalks in the town of Scottsboro and then a parade by the Hosiery Mill band apparently celebrating and felicitating the jurors upon their verdict and musical demonstration in cooperation with the demonstration put on by the citizens in the streets and on the sidewalk following the verdict in the case against Clarence Norris and Charlie Weems. The jurors who were summoned in the cases next [fol. 69] to be tried were exposed to these demonstrations and celebrations (possibly they participated in the celebration) and they would have to be more than human not to be affected by these demonstrations, and the effect upon the jurors could not help *to* adverse to the defendant then on trial and yet to be tried.

These demonstrations were produced because of high excitement in Jackson County, and that the people who had gathered at Scottsboro to witness these several trials had produced so much excitement that apparently a gen-

eral holiday was being taken by the Hosiery Mill band so that at the most inopportune time for the interest of these defendants this Hosiery Mill band was parading the streets of Scottsboro and it is reported that they played (such pieces as "Hail, Hail, the Gang's All Here" and "There Will Be a Hot Time in the Old Town Tonight"), but whatever it was and whether this band was innocent and appeared as a mere coincidence or whether it was purposely on the streets can make no difference because the effect on the jurors at that time trying Haywood Patterson and the next jury later selected from the crowd that tried the other five defendants was adverse to them and manifestly to their disadvantage and detriment, and the fact that jurors were or might have been adversely affected by matters happening outside of the court room which adversely affected the interests of the defendants or anyone of them was a denial of due process of law to the defendants and adversely affected the defendants and necessarily denied to them a fair and an impartial trial by free and unbiased and imparial jurors.

Affiants further state that because of the enormity of the charge in the first instance, they were not given a fair trial.

Second. That because they were negroes and paupers and locked in jail without an opportunity to confer with or employ counsel they were not given a fair trial.

Third. That the alleged vicitim was a white woman.

Fourth. Publications in newspapers averring that the proof of guilt was most positive and falsely alleging that some of the defendants or all of them had confessed their guilt, which was not true, but the public throughout Jackson County was made to believe that such were the facts, rendered an impartial — impossible; the fact that the defendants were compelled to go to trial represented by attorneys who, by their own admission in open court, stated that they were not prepared and had made no preparation whatsoever, constituted a denial of due process to the defendants and prevented a fair and impartial trial; this is especially true because in fact the defendants were neither represented by [fol. 70] counsel retained by them or anyone on their behalf authorized to make such retainer, nor was such counsel

appointed by the court as trial counsel, according to the record of pages one to eight of the Weems-Norris record annexed hereto and marked Exhibit 1, and made a part hereof, proves that so far as Mr. Roddy is concerned, he made no pretensions that he was retained as attorney for the defendants, and the record shows that he was not appointed as attorney for the defendants; he was, in fact, present merely as an observer by his own admission and made no pretensions at having prepared the case for trial, but sought a change of venue, and that the record shows Mr. Roddy was appointed for the purpose of arraignment only, and when Mr. Roddy appeared the court released all the members of the Scottsboro Bar after arraignment, and when the trial was about to start during the discussion Mr. Moody agreed to assist Mr. Roddy who was never employed and who appeared only by the courtesy of the court, and the defendants were never asked, according to this record, their wishes or desires in the premises and yet the lives of all eight of them were at stake and were later demanded at the hands of a jury at a trial about to begin without an opportunity to tell their trial lawyer their separate defenses, and when forced into trial without witnesses and without an opportunity to secure any witnesses, and in a county hostile to their race and when there was no chance to communicate with the outside, to either parents, relatives or friends, and when they had no money and no one to advise them of their legal or constitutional rights and when they were overawed and intimidated and threatened by a mob of hostile citizens from the day they were arrested until after the sentence of death was pronounced upon them and because of their immature years and because seven of them can neither read nor write anything of consequence and are ignorant of the law and did not know how to prepare their case for trial or how to protect their rights or themselves from insult, embarrassment and intimidation and especially when a mob had gathered in Scottsboro after they were arrested and the Mayor and public officials had to make speeches to try to persuade the mob to adjourn and it was necessary for military forces to come to Scottsboro and to by force of arms disperse this hostile and enraged gathering and to re-

quire them to leave the town of Scottsboro and from the County of Jackson the trial jury for all the defendants had to be selected and by reason of a custom of long standing there was not one negro selected for the entire trial, throughout the whole county where a population of 30,000 people when a large number of negro land-owners were [fol. 71] qualified jurors, or for jury service and members of the negro race; all of these indubitable and undisputable facts lead directly to the inevitable and irresistable conclusion that these defendants did not have and can never have a fair and an impartial trial in Jackson County as they are entitled to have under the law of the State of Alabama and under the law of the land.

Affiants further show that the trial was unfair because damaging evidence was admitted in the trial against some of them about Ruby Bates and they were not indicted or called upon to answer any charge about her and any testimony with reference to her should have been excluded and not considered by the court or jury under the indictment upon which they were tried.

Affiants further state that before reaching Paint Rock, Alabama, they did not leave the train because they were not guilty and had no motive or reason to run and they did not run or make any attempt to leave the train or to get away, but a number of other negroes did leave the train and did get away and were never arrested.

Affiants are advised that the prosecuting witness, Victoria Price was a woman of bad reputation and bad character and that the defendants ought to have been permitted to prove on the trial that she was of bad character and bad reputation and the refusal of the court to permit her to be cross-examined on this subject was error and for which a new trial ought to be granted. See affidavits of Silas Johnson and others filed in this cause. Affiants are advised that newly discovered evidence touching the character and reputation of Victoria Price and Ruby Bates has been filed in this case and these affiants did not discover or know about this evidence and its importance until since the trial, but if they had known about it they had no chance to have procured it and to produce it on the trial at Scottsboro, because the witnesses who made the affidavits were afraid to go to Scottsboro to attend the trial and lived

out of the State of Alabama where they could not be compelled to attend the trial by court process of this State.

Affiants are advised that there were no safeguards thrown around the jury prior to the starting of the trial in order to keep them free from contact with the population in general and that they were permitted to read hostile newspapers and to witness the demonstration in the Courthouse and on the streets of Scottsboro and to witness the parade of the Hosiery Mill band through the streets when Clarence Norris and Charlie Weems were convicted and that there was no effort on the part of military authorities [fol. 72] to keep jurors, not yet placed on the jury separate and apart from the people in general and these jurors were exposed to excitement, hostilities and prejudicial newspaper articles combined with public feeling surcharged with excitement produced a situation impossible of correction and the result of which adversely affected the defendant, confused counsel who tried to represent them, overawed the men who sit on the jury and rendered an impartial, orderly, quiet, judicial hearing impossible and as a direct result thereof these affiants are about to be deprived of their lives without due process of law and in violation of the most sacred constitutional rights ever provided for in this State and under the laws of the land.

Affiants made application for a change of venue and in their application swore they could not get a fair trial and the events which happened during these several trials confirmed and verify that contention and the trial should have been removed from Scottsboro to some other county as requested in their application for a change of venue.

Affiants are advised that the trial judge did not question the jurors who tried these defendants on the subject as to whether or not they held racial prejudice and whether or not they would give a negro the same fair, patient, impartial hearing that they would give a white man under similar circumstances and that this prejudiced their rights in this case because from all that happened at Scottsboro there was no man on any of these juries under all the excitement that was qualified to meet the legal requirements of an impartial uninfluenced and unbiased juror as provided for by the laws of the State of Alabama and the laws of the land.

Affiants further state that they were threatened with lynching, terrified by mob and confused and embarrassed through the trial by hostile words, threats and public demonstrations and the jury which tried them knew or had a chance to know and were exposed to these illegal influences, and their minds influenced by an atmosphere surcharged with hostility, partiality, prejudice, caprice and rancor against the defendants and their lives were demanded as a sacrifice therefor without due process of law, then they were not guilty of the charge contained in the indictment against them.

The defendants demanded a special venire or a special list of jurors for their separate trial and this request was refused and denied and the defendants had to go to trial without the right to select or to be consulted about select-
[fol. 73] ing the jury to try these cases. These defendants did not challenge any juror and did not know that they had a right to challenge jurors.

The indictment in these cases fail to state sufficient facts in that no time or place or a statement of circumstances were set out giving the facts constituting the alleged offense so as to enable the defendants to properly prepare for trial and to be protected against double jeopardy.

There was a number of white boys on this train who were available as witnesses for the state and were not introduced by the state and no reason given for not doing so and the name of one or more of them appeared on the indictment.

(Signed) Olen Montgomery. (Signed) Eugene (his X mark) Williams. (Signed) Willie (his X mark) Robertson. (Signed) Haywood Patterson. (Signed) Charlie (his X mark) Weems. (Signed) Andy (his X mark) Wright. (Signed) Clarence (his X mark) Norris. (Signed) Ozie (his X mark) Powell.

Subscribed and sworn to before me on this 15th day of May, 1931. (Signed) U. L. Heustess, Notary Public. My commission expires Feb. 27th, 1935. (Seal.)

[File endorsement omitted.]

EXHIBIT NO. 1 TO AFFIDAVIT OF THE EIGHT DEFENDANTS, STATE VS. HAYWOOD PATTERSON ET ALS.

IN CIRCUIT COURT OF JACKSON COUNTY, SPECIAL SESSIONS, 1931

STATE OF ALABAMA

VS.

CHARLEY WEEMS and CLARENCE NORRIS, Alias CLARENCE MORRIS

[fol. 74] Appearances:

H. G. Bailey and Proctor & Snodgrass, attorneys for State.

Stephen W. Roddy and Milo Moody, attorneys for defendants.

This cause coming on to be heard was tried on this the 6th day of April, 1931, before his Honor A. E. Hawkins, Judge Presiding, and a jury when the following proceedings were had and done, to-wit:

The Court: All right, the first case, Solicitor, is the case of State vs. Haywood Patterson, et als. What says the State?

Mr. Bailey: We are ready if the court please.

Mr. Roddy: If the court please, I am here but not as employed counsel by these defendants, but people who are interested in them have spoken to me about it and as Your Honor knows, I was here several days ago and appear again this morning, but not in the capacity of paid counsel.

The Court: I am not interested in that; the only thing I want to know is whether or not you appear for these defendants.

Mr. Roddy: I would like to appear along with counsel that Your Honor has indicated you would appoint.

The Court: You can appear if you want to with the counsel I appoint but I would not appoint counsel if you are appearing for them; that is the only thing I am interested in—I want to know if you appear for them.

Mr. Roddy: I would like to appear voluntarily with local counsel of the bar, Your Honor appoints; on account of

friends that are interested in this case I would like to appear along with counsel Your Honor appoints.

The Court: You don't appear if I appoint counsel?

Mr. Roddy: I would not like for your Honor to rule me out of it.

The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.

Mr. Roddy: Your Honor has appointed counsel, is that correct?

The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.

Mr. Roddy: Then I don't appear then as counsel but I do want to stay in and not be ruled out in this case.

The Court: Of course I would not do that——

[fol. 75] Mr. Roddy: I just appear here through the courtesy of Your Honor.

The Court: Of course I give you that right; well are you willing to assist?

Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under Your Honor's appointment.

The Court: The only thing I am trying to do is, if counsel appears for the defendants I don't want to impose upon you all, but if you feel like counsel from Chattanooga——

Mr. Moody: I see his situation of course and I have not run out of anything yet. Of course, if Your Honor purposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case; they did not know what else to do.

The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint——

Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by local counsel.

The Court: That is what I was trying to ascertain, Mr. Parks.

Mr. Parks: Of course, if they have counsel, I don't see the necessity of the court appointing anybody; if they haven't counsel, of course, I think it is up to the court to appoint counsel to represent them.

The Court: I think you are right about it, Mr. Parks, and that is the reason I was trying to get an expression from Mr. Roddy.

Mr. Roddy: I think Mr. Parks is entirely right about it; if I was paid down here and employed it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of people who are interested and not as paid counsel, and I certainly haven't any money to pay them and nobody I am interested in had me to come down here has put up any fund of money to come down here and pay counsel. If they should do it, I would be glad to turn it over to counsel, but I am barely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial, and I think the boys would be better off if I step entirely out of the case, according to my way of looking at it and according to my lack of preparation of it and [fol. 76] not being familiar with the procedure in Alabama, and whatever might come from people who have spoken to me will go to these counsel. I don't know what they will pay and cannot make any statement about it; I don't know a thing about it. I am here just through the courtesy of Your Honor, if Your Honor will extend me that courtesy. I have talked to these gentlemen about the matter and they understand the situation and the circumstances under which I am here, and I would like for Your Honor to go ahead and appoint counsel. I understand how they feel about it.

Mr. Parks: As far as I am individually concerned, if I represent these defendants, it will be from a high sense of duty I owe to the State and to the court, and not to the defendants; I could not take the case for a fee, because I am not practicing in the general Court to any extent. I am a member of the bar and I could not refuse to do what I could for the court if the court saw proper to appoint me.

The Court: I understand your situation, Mr. Parks, just an officer of the court trying to do your duty under your oath; that is what I am trying to find out from Mr. Roddy, if he appears as counsel for the defendants, I don't think I ought to appoint counsel; if he does not appear, then I think the members of the bar should be appointed.

Mr. Roddy: If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that extent.

The Court: Well, gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear, I wouldn't, of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment. Of course, I don't mean to cut off your assistance in any way—Well gentlemen, I think you understand it.

Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

The Court: All right, all the lawyers that will; of course I would not require a lawyer to appear if——

Mr. Moody: I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.

The Court: All right.

Mr. Proctor: Now, Your Honor, I think it is in order for me to have a word to say. When this case was up for ar-[fol. 77]raignment, I met Mr. Roddy and had a talk with him, and I gathered from Mr. Roddy that he would be employed in the case, and he explained the situation to me that he was going back to see the parties interested and he thought probably there would be employed counsel in the case, and I recognize the principle involved, and the fact that I took it for granted that Mr. Roddy would be here as employed counsel, and I was approached then to know if I was in a position to accept employment on the other side in the prosecution, and I thought under the circumstances I was. I am not trying to shirk any duty, and I know my duty is whatever the court says about these matters, but I did accept employment on the side of the State and I have conferred with the Solicitor with reference to matters pertaining to the trial of the case, and I think it is due the court, I was not trying to shirk any duty whatever, and I want the

court to understand my attitude in the matter; I am ready to obey any order of the court.

The Court: Of course, that is a matter with counsel; I know nothing about these affairs.

Mr. Proctor: I wanted the court to understand why it was I agreed to become assisted with counsel for the State; thinking they had counsel, I accepted employment on this side, thinking, of course, they had counsel, and I would be relieved from that duty, and I have been conferring with the Deputy Solicitor about matters pertaining to the trial. I am ready to do whatever the court thinks is the proper thing to do.

The Court: I will leave that matter with the attorneys interested, Mr. Proctor, because I know nothing about it.

Mr. Roddy: Your Honor, the gentlemen here have been very agreeable and want to do what they can to express themselves that way to me, and I am willing to appear with their assurance they will go ahead with me in the trial of these cases.

The Court: All right.

The Court: All right, now what says the defendant?

Mr. Roddy: Your Honor please, we have a petition we wish to present at this time for a change of venue—Shall I pass it to Your Honor?

The Court: Have you more than one copy?

Mr. Roddy: No, sir, I have just one copy.

Mr. Roddy: If your Honor please, while the Solicitor is reading that, I wish to call the court's attention to the fact that two of these defendants are under the age of sixteen years, Roy Wright is under the age of 14 and Eugene Williams 15.

[fol. 78] The Court: All right.

Mr. Bailey: If the Court please, we interpose an objection to the filing and consideration and hearing of this petition on the grounds that it comes too late. I think the statute provides that it must be done as soon as practicable and the State must have reasonable notice of it. A week has passed since the date of arraignment and to wait till the day of trial is called to introduce a thing like this, a motion for change of venue, I think, in the first place, comes too late.

The Court: I would not require you, of course, I will give you time to answer it.

Mr. Bailey: That is the first ground. If Your Honor permits the filing of it, I move to strike it because it is nothing except conclusions; there are no sufficient instances of fact set out in there, it is a conclusion from start to finish.

The Court: I don't know what the exhibits were.

Mr. Bailey: The exhibit is just a copy of a newspaper article, and that is a conclusion pure and simple; there is no petition concerning that newspaper article, no affidavit attached, and no witness in support of this. Now, we first object to the filing and the consideration of it. If Your Honor permits them to file it, we move to strike it because the grounds alleged are mere statements of conclusions and not sufficient, and we also want to prepare and file a demurrer setting out the same grounds.

The Court: I expect that is in time, Solicitor; I know the circumstances sometime but I expect under the circumstances that is proper.

Mr. Bailey: Then we move to strike it because the substance of it is setting out a mere conclusion; there is no affidavit attached in support of it. Now, Your Honor might permit me to offer testimony on it, but we move to strike it and to demur to it.

Mr. Roddy: Your honor, I might suggest that the petition does not only base conclusions, but it tells facts about troops being here, and Your Honor, please, we offer the Sheriff at this time to show the reason for it and why—the matters set out in the petition itself.

The Court: Well, do you want time to answer it? Have you any further testimony, anything in support of your petition?

Mr. Roddy: We offer the Sheriff, if the court please.

The Court: Do you want to examine him now?

Mr. Roddy: Yes, sir.

M. L. WANN, examined as witness on defendant's petition.

[fol. 79] Examined by Mr. Roddy:

Q. What is your name?

A. M. L. Wann.

Q. You are the Sheriff of this county?

A. Yes, sir.

Q. Did you deem it necessary to call out a unit of the National guard to bring these defendants to court to trial?

State objects to that. Court overruled.

A. Well, I will just answer it this way; I had a crowd there, I didn't see any guns there or anything like that, and I did not hear any threats, but——

Mr. Roddy: Did you call this National Guard unit to accompany the prisoners in court?

Mr. Wann: Today?

Q. Yes, sir?

A. Yes, sir; I did.

Q. Did you when they were brought here several days ago?

A. Yes, sir.

Q. As sheriff of this county you deemed it necessary for their protection for the National Guard unit to bring these prisoners to court?

A. Yes, sir; I thought so.

Q. That is on account of the feeling that existed against these defendants?

A. Not only here, but people all over the county——

Q. You deemed it necessary not only to have the protection of the Sheriff's force but the National Guard?

A. Yes, sir.

The Court: Is that all?

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Proctor:

Q. Sheriff, you make up your mind from the sentiment of the people on the grounds of the offense and not from any voice of feeling?

Mr. Roddy: We object to the leading question.

The Court: He has a right to lead, Mr. Roddy.

A. Yes, sir.

Q. It was more on the grounds of the charge you acted on in having the guards called than it was on any sentiment you heard on the outside?

[fol. 80] A. That is right.

Q. You have not heard anything as intimated from the newspaper in question that has aroused any feeling of any kind among a posse, have you?

A. No, sir.

Q. Is it your idea as Sheriff of the county that the sentiment is no higher here than in any adjoining counties?

A. Not any higher here than in any adjoining counties.

Q. You don't find any more sentiment in this county than naturally arises on the charge?

A. No, sir.

Q. Is it your judgment that the defendants could have a fair trial here as they could in any other county adjoining?

A. I think so.

Q. I will ask you whether or not this county—if it is your judgment or opinion from association among the population of this county, if they could have a fair and impartial trial in this case in Jackson County?

A. I think they can.

Q. Is that your judgment?

A. Yes, sir.

Q. You have heard nothing of any threats or anything in the way of the population taking charge of the trial?

A. None whatever.

Q. I will ask you if it is not the sentiment of the county among the citizens that we have a fair and impartial trial?

A. Yes, sir.

Mr. Proctor: That is all.

Redirect examination.

Examined by Mr. Roddy:

Q. You have the troops here right now to keep the crowd back from the court house?

A. Yes, sir.

Q. And there is a great throng around this courthouse right now that would come in if you did not have the troops?

A. Yes, sir; they are from different counties here today.

Q. You don't know from how many different counties?

A. I know there is lots of them; there are several from Madison and Marshall and DeKalb.

Q. And there are hundreds of them around the courthouse at the present time?

[fol. 81] A. Yes, sir.

Q. They are not allowed to come by the guards to the courthouse?

A. No, sir; that is the rule.

Q. Isn't it a fact that at the time these prisoners were arrested and brought to this jail, that several hundred gathered there?

A. I estimated the crowd around 200.

Q. Then you took precautions to protect them?

A. Yes, sir; I thought it was my duty as an officer.

The Court: Is that all?

Q. How many units of the National Guard are there here protecting these defendants at the present time?

A. I think there is three if I understood Major Starnes, or five.

Q. Have you five units of the State militia?

A. Yes, sir.

Mr. Roddy: That is all.

The Court: Anything else?

Mr. Roddy: I might ask Major Starnes.

[fol. 82] Major JOE STARNES, witness for defendants on their motion, testified:

Examined by Mr. Roddy:

Q. You are Major Starnes, of the Alabama National Guard?

A. I am.

Q. How many men have you here protecting these defedants?

A. 107 enlisted men.

Q. How many units of the National Guard?

A. Five units represented.

Q. You say you have 107 privates?

A. Enlisted men and some non-commissioned privates.

Q. How many officers?

A. Eleven officers.

Q. These men accompanied these defendants to this court?

A. Two companies did.

Q. How many companies brought them over several days ago for arraignment?

A. I had a picked group of 25 enlisted men and two officers from two of my companies.

Q. How soon after their arrest was this outfit called for the protection of these defendants?

A. I received the call from the State Adjutant General at Montgomery at 9:00 P. M. on the evening that the attack occurred in the afternoon.

Q. On every occasion you have been in Scottsboro, you have found a crowd of people gathered around?

A. That is correct.

Q. And at the present time you have issued orders to your men not to let any come in the courthouse or courthouse grounds with arms?

A. That is correct.

Q. That situation exists right now?

A. That is correct.

Q. And has existed on every appearance of the defendants?

A. Not only today but that under orders of the Court.

Q. Now, your units of the National Guard have protected these men and have been with them on every appearance they have made in this courthouse?

A. That is correct.

[fol. 83] Q. Every time it has been necessary and for the arraignment of the defendants you have brought them here and have carried them away?

A. Yes, sir.

Q. After these men were arrested, when did you first bring them back?

A. On Tuesday of the past week is my recollection, March 31st.

Q. Why did you then bring them back here?

A. For arraignment.

Q. How long were they here?

A. We arrived here at 10:30 and left at 4:00.

Q. You brought them at 10:30 in the morning and left at four in the afternoon?

A. That is correct.

Q. Took them back to Gadsden?
A. That is right.
Q. Then when did you bring them back?
A. Brought them back and arrived here at 5:15 this morning.
Q. You have had them here twice from Gadsden?
A. That is right.
Q. You bring them here and then carry them back?
A. That is right.

Mr. Roddy: That is all.

Cross-examination.

Examined by Mr. Bailey:

Q. You first came here of course under orders from the Governor?
A. Yes sir.
Q. And you have been here under his orders ever since?
A. That is correct.
Q. You say you made how many trips here from Gadsden?
A. This is the third trip.
Q. In your trips over to Scottsboro in Jackson County and your association with the citizens in this county and other counties, I will ask you if you have heard of any threats made against any of these defendants?
A. I have not.
Q. From your knowledge of the situation gained from these trips over here I will ask you if it is your judgment these defendants can obtain here in this county at this time a fair and impartial trial and unbiased verdict?
[fol. 84] A. I think so.
Q. Have you seen any demonstration or attempted demonstration toward any of these defendants?
A. Absolutely none; a good deal of curiosity but not hostile demonstration.
Q. Your judgment the crowd here was here out of curiosity?
A. That is right.
Q. And not as a hostiie demonstration toward these defendants?
A. That is right.

Q. And not as a hostile demonstration toward these defendants?
A. That is right.

Mr. Bailey: That is all.
The Court: Anything else for the defendants?
Mr. Roddy: That is all, your Honor.
The Court: Anything further for the State?
Mr. Bailey: No, sir; we don't care to offer anything further. Now, was our objection to the newspaper articles noted?
The Court: Well, the motion is overruled, gentlemen.
Mr. Roddy: We want to except to your Honor's ruling.
The Court: Yes, I will give you an exception. Let the motion be filed, Mr. Clerk—I will give you an exception to it, Mr. Roddy.
The Court: Now, is the State ready to go ahead?
Mr. Bailey: Will your Honor have our witnesses called, we have some we are not sure about.
The Court: Call the State witnesses Mr. Clerk.

(Witnesses called by the Clerk for the State.)

Mr. Roddy: Your Honor please, it is about twelve o'clock and we have a motion in here about the trial of these boys under the age of sixteen years.
The Court: Well, we will see which one we will try first.
Mr. Roddy: We can show their ages to the court.
The Court: We will see about it when we get to it. What says the State?
Mr. Bailey: The State is ready for trial.
The Court: Which one do you want to try first, Solicitor?
Mr. Bailey: Is there a severance demanded?
Mr. Roddy: No, sir; we don't demand a severance.
[fol. 85] The Court: No severance is demanded. Now, do you want to try them all?
Mr. Bailey: The State demands a severance and we will try under the first joint indictment Clarence Norris, Charley Weems and Roy Wright first.
Mr. Roddy: If the Court please, I would like to inquire about these two boys that are under the age of 16.
The Court: Are they in that group?
Mr. Bailey: Roy Wright is, yes, sir.

The Court: Do you want a severance as to this young one who claims he is under age?

Mr. Bailey: That is a matter with the Court.

The Court: I understand, but that procedure will delay the procedure in the other cases.

Mr. Bailey: I would like to take up the question of his age first.

The Court: I think, if you can, you ought to proceed with the others.

Mr. Roddy: We are willing to offer proof of the age of these boys.

The Court: I understand but I don't want to take that up now, I want to proceed with the others.

Mr. Bailey: As long as his age is not presented to the court, we want to proceed.

Mr. Roddy: Before these boys are placed on trial, we would like for Your Honor to pass on that.

The Court: I will pass on that, but we can do that possibly some night when we are not engaged up here with the jury; of course, that is a matter, if it is raised, it comes up to be passed on here first.

Mr. Bailey: Then we will proceed as to the other two.

The Court: What are the names of the other two, Solicitor?

Mr. Bailey: Charley Weems and Clarence Norris, alias Clarence Morris.

Mr. Roddy: All right, call your witnesses.

(Witnesses called by the Clerk for the defendants.)

Mr. Roddy: We want our witnesses, if the Court please, or know that we can get them.

The Court: Do you want an attachment for the ones that do not answer?

Mr. Roddy: Yes, sir.

The Court: I expect it would not be right to attach Mr. [fol. 86] Amos; he is in mighty bad health and I don't expect I ought to give it as to him.

Mr. Roddy: We don't want to impose a hardship on anybody, if the Court please, but we want our witnesses here; all we want to know is that the witnesses can be had before we announce ready for trial.

The Court: Have these witnesses been served?

Clerk: Yes, sir.

The Court: Who are the other two? I will give you a showing for Mr. Amos, of course. I know his condition. Who else besides Mr. Parrish that did not answer?

Mr. Thompson: Mr. Riddick and Walter Sanders did not answer.

The Court: Have they been served?

Clerk: Yes, sir.

The Court: Do you want an attachment for those witnesses?

Mr. Moody: Yes, sir; we would like to get them here; if we cannot get them here, then we would like to have a showing for them.

The Court: I expect everyone of them on a telephone call would come. Sheriff, at the noon hour, you call these witnesses, and I expect they will come right on.

(Court adjourned for noon recess.)

The Court: All right, let's go ahead.

Mr. Roddy: Your Honor, we were talking with the defendants out here, and if Your Honor will grant me a few minutes' time, I might simplify these matters. I want to be of all the help I can with the court and everyone concerned, but there are some very material facts in the case; I have no motive in this world in appearing down here except to get the absolute truth in this matter, and if Your Honor will indulge me a few minutes——

The Court: All right, go ahead as far as you can.

Mr. Roddy: It will take me ten or fifteen minutes.

The Court: What says the defendants now, Mr. Roddy?

Mr. Roddy: We don't know, your Honor please, about our witnesses.

The Court: What about the witnesses, Mr. Sheriff? All right, gentlemen, if we don't get the witnesses here, I will allow you a showing for them. Is that all right?

Mr. Moody: Yes, sir.

Mr. Bailey: Subject, of course, to legal objections.

The Court: All right, Sheriff, now call the jurors.

(Jurors called by the Sheriff and qualified by the court and a list made up containing the names of 72 qualified jurors from which to strike the jury.)

[fol. 87] Defendants Charley Weems and Clarence Norris arraigned and plead not guilty.

Indictment read to the jury by the Solicitor and the defendants by their counsel plead not guilty thereto.

Witnesses sworn by the Clerk and on motion of the State are put under the rule, except as to the other defendants not on trial excused from the rule by court.

Filed May 19, 1931.

C. A. Wann, Clerk Circuit Court.

On the 19th day of May, 1931, defendants separately and severally filed in said cause, in support of their said motion for new trial the separate and several affidavits of Roberta Fearn, Bertha Lowe, Willie Crutcher, Allen Crutcher, the joint affidavit of Henry Cokely, Susie Cokely and Georgia Haley, and the affidavit of Percy Ricks, which said affidavits are in words and figures as follows, to-wit:

AFFIDAVIT OF ROBERTA FEARN

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2042 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath in due form of law that she resides in the town of Huntsville, Alabama, and that she is personally acquainted with Victoria Price, alleged victim in the case of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

[fol. 88] Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute, and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

(Signed) Roberta Fearn.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public. Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

AFFIDAVIT OF BERTHA LOWE

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

The undersigned affiant makes oath that she lives in the Town of Huntsville, Alabama, and that she has seen Ruby Bates and Victoria Price, the alleged prosecuting witnesses against the nine negro boys at Scottsboro, Alabama, and that these two girls live in Huntsville, Alabama, a portion of the time, and that she has seen them in Huntsville on various occasions, in negro section of Huntsville, and that

Ruby Bates is staying now in a negro section living in a row of negro houses and associates with negroes almost exclusively in the row where she lives and that she associates with Victoria White, who, as affiant is told, formerly lived in a negro section of Huntsville near where Ruby Bates now lives, and that these two girls appear to be about twenty or twenty-one years old, and they have been in these negro sections perhaps off and on for nearly three years, and at time affiant would see them often and again she would not see them for a month or longer.

She heard they visited Chattanooga, but she never knew them in Chattanooga, but she knew them in Huntsville, as [fol. 89] that is where she saw them, in negro section of the City of Huntsville, and they were reputed to be prostitutes.

(Signed) Bertha Lowe.

Subscribed and sworn to before me, May 18, 1931. (Signed) Lewis C. Golden, Notary Public, County of ——. My commission expires on the 1st day of May, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2404

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF WILLIE CRUTCHER

The undersigned affiant makes oath in due form of law that she resides in the Town of Huntsville, Alabama and that she is personally acquainted with Victoria Price, alleged victim in the case of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this Honorable Court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price

often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute, and she told affiant that she was going to make a trip in last year from Huntsville and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and these girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit with negroes freely.

[fol. 90] (Signed) Willie Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public, Huntsville, County of Madison, Alabama. My commission expires May 1, 1935. (Seal.)

[File endorsement omitted.]

IN CIRCUIT COURT OF JACKSON COUNTY

No. —

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF ALLEN CRUTCHER

The undersigned affiant makes oath in due form of law, that she resides in the Town of Huntsville, Alabama, and that she is personaliy acquainted with Victoria Price, alleged victim, in the cases of the State of Alabama vs. Haywood Patterson, and eight other boys recently tried in this

Honorable court at Huntsville, Alabama, and that Victoria Price formerly resided in a negro section of Huntsville right near where this affiant lived, and that Victoria Price often talked to and with this affiant, and that Victoria Price was a girl of easy virtue, and that she visited and associated with colored people and lived among them.

She had the reputation of being a common prostitute and she told affiant that she was going to make a trip in last year from Huntsville, and she may have gone to Chattanooga, as she said last year she was going on a trip and it only takes about three hours for the train to run to Chattanooga from Huntsville, as affiant is advised.

Affiant saw Ruby Bates with Victoria Price on different occasions and Ruby Bates had a reputation of being a prostitute and she lives now in what is called an exclusive negro section in Huntsville, Alabama, and those girls have been in and about these colored neighborhoods from time to time for two or three years, and they are about twenty years old, as she understands. They associate and visit negroes freely.

(Signed) Allen Crutcher.

Subscribed and sworn to before me May 18, 1931. (Signed) Lewis C. Golson, Notary Public, Huntsville, County of Madison, Alabama, May 1, 1935. (Seal.)

[File endorsement omitted.]

[fol. 91] In Circuit Court of Jackson County

No. —

State of Alabama

vs.

Haywood Patterson and Eugene Williams et al., Defendants

Affidavit of Henry Cokley, Susie Cokley, and Georgia Haley

State of Georgia,
County of ——:

Georgia Haley, Henry Cokley and Susie Cokley, citizens of Bremen, Georgia, make oath in due form of law, that

they are personally acquainted with Eugene Williams and his mother Mamie Williams of Chattanooga, Tennessee, and that Mamie Williams was married at Rossville, Georgia, near Chattanooga, Tennessee, on April 9, 1916, and that Eugene Williams, her son, was born on December 6, 1917.

These affiants further state that they heard about a boy named Eugene Williams being in trouble in Scottsboro, Alabama, but his age was reported as being 19 years old, and that they did not think it was Eugene Williams of Chattanooga, Tennessee, son of Mamie Williams, and for that reason they did not send an affidavit about his age earlier than this time, and that this is the first they heard that it was Mamie Williams' son and a grandson of Georgia Haley and a nephew of Henry Cokley and his wife, Susie Cokely.

We were living at Chattanooga, Tennessee, just across the State line from Rossville, Georgia, when Mamie Williams was married and were living with her at the time Eugene Williams was born, and we are positive about his age and the date of his birth, as set out in the foregoing affidavit.

(Signed) Henry Cokely. (Signed) Susie Cokely. (Signed) Georgia (her X mark) Cokley.

[fol. 92] Subscribed and sworn to before me on this the 4th day of May, 1931, at Bremen, Georgia. (Signed) S. O. Smith, Clerk Superior Court, Haralson County, Ga. (Seal.)

[File endorsement omitted.]

Chambers of Judge, Superior Court, Tallapoosa Circuit

J. R. Hutcheson, Judge, Douglasville, Georgia

At Chambers,
Douglasville, Ga., May 6th, 1931.

I do hereby certify that the signature of S. O. Smith, Clerk of the Superior Court of Haralson County, Georgia, is his genuine signature to the attached four pages of typewritten pages.

(Signed) J. R. Hutcheson, Judge S. C., Haralson Co. Ga.

IN CIRCUIT COURT OF JACKSON COUNTY

No. 2402-2404 and 2406

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON, EUGENE WILLIAMS, OZIE POWELL, Willie Robertson, Andy Wright, Clarence Norris, Charlie Weems, Olen Montgomery

AFFIDAVIT OF PERCY HICKS

Percy Hicks makes oath that he was on the train that the above named defendants were riding from Chattanooga to Paint Rock, Alabama, on the day that defendants were arrested at Paint Rock, Ala.

That, when the train got to Stevenson, that he saw the [fol. 93] two girls, Victoria Price and Ruby Williams get into a freight box car, while this train was standing at Stevenson, and that he saw them when the train approached Stevenson, Alabama, going toward Scottsboro, and that when this train reached Stevenson, one of them had on overalls and the other one had on a dress, and that he saw them get on the train and they went into a freight box car.

Later he saw them get out of this box car when the train pulled over on the Southern track at Stevenson he saw them get back into the box car, and they were in it when he last saw them until they got to Paint Rock, and at Paint Rock and they were on the ground running along the train and the second girl was following the first one and looked like they were trying to get away from the train and the officers stopped them.

There was a number of officers there armed and that affiant saw them getting some of the boys out of box cars and some on top of the train, and scattered all along the length of the train.

He saw the car called the gondola on which the girls claimed to be riding and it was nearly full of crushed rock called "Chatt" and loaded within about two feet of the top of the car.

He saw one of these girls a week before this trouble and she was hoboing from Stevenson to Huntsville on a freight train.

He further states that the train was running about thirty-five miles an hour, from Stevenson to Paint Rock, and that the time was about one hour.

Affiant further states that he is not related to any of the defendants and does not know any of them except that he saw them when they were arrested and that he furnishes this information to counsel for the defendants in order that the truth might be known as far as stated in the foregoing affidavit.

(Signed) Percy Hicks.

Subscribed and sworn to before me on this the 16th day of May, 1931. (Signed) Geo. W. Chamlee, Notary Public, Hamilton County, Tennessee. (Seal.)

[File endorsement omitted.]

[fol. 94] On the 5th day of June, 1931, the defendants separately and severally filed in said cause and spread upon the motion docket of said court a further amendment to said motion for new trial, which said amendment to said motion is in words and figures as follows, to-wit:

SECOND AMENDED MOTION FOR NEW TRIAL

Comes the defendants, Charley Weems and Clarence Norris, in the above styled cause of the State of Alabama vs. Charles Weems and Clarence Norris, and move the court to set aside the verdict and judgment rendered in this case No. 2402 against them on the 7th day of April, 1931, in the Circuit Court of Jackson County, Alabama, and to grant them a new trial and they assign the following reason and causes, separately and severally, to-wit:

I. The indictment on which the defendants were tried was void and illegal—

(a) In that it was vague, indefinite and uncertain.

(b) In that it set forth no facts constituting the crime therein alleged, nor the exact date when and the exact place where the alleged crime was committed by the defendants;

(c) In that it failed properly to apprise and inform the defendants of the exact nature, basis and grounds of the charge against them and which they were called upon to meet;

(d) In that by reason of the aforesaid vagueness, indefiniteness and uncertainty of said indictment, the defendants could not properly and adequately prepare to meet and defend themselves at the trial;

(e) In that by reason of the aforesaid vagueness, indefiniteness and uncertainty of the indictment, the defendants have become and are subject for the same offence to be twice put in jeopardy of life or limb in violation of said defendants' rights under the constitution of the United States, Amendment 5, which provides: "* * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb," and the rights under the Constitution of the State of Alabama, Article 1, Section 6;

(f) In that the said indictment by reason of its vagueness, indefiniteness and uncertainty was a denial of the defendants' rights under the Constitution of the United States, Amendment 14, Section 1, which provides: "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state drprive any person of life, [fol. 95] liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws," and under the Constitution of the State of Alabama, Article 1, Section 6, which provides: "that in all criminal prosecutions, the accused * * * shall not be deprived of life, liberty or property, except by due process of law." For these reasons the judgment ought to be arrested and a new trial granted.

II. The defendants on trial for their lives were entitled and had a right to be tried by a jury entirely free from bias, prejudice, hostility, vindictiveness or passion, and free from outside or extra-legal influences and communications which might tend to disturb or distract their minds from a free, impartial, unbiased and dispassionate consideration of the merits of the case and of the evidence before them; and where, as in this case, it was evident in

advance of the trial that by reason of the hostile sentiment and feeling which dominated the inhabitants of the county from which a jury was to be chosen, the jury's would be or become influenced against the defendant by the prevailing sentiment and feeling of hostility in the said county, a change of venue to another and different county should have been granted by the court and the court's refusal to grant a change of venue was a denial to the defendants of their right under the Constitution of the United States, Amendment 14, Section 1, and the Constitution of the State of Alabama, Article 1, Section 6, and was an abuse of judicial discretion, and constituted reversible error. A new trial should therefore be granted.

III. A new trial should be granted in that the rights of the defendants under the Constitution of the United States, Amendment 14, Section 6, were violated for the following reasons:

(a) Defendants, while under arrest, were not afforded nor did they have an opportunity to employ counsel to aid and advise them;

(b) They had no opportunity to employ an attorney to represent them;

(c) They had no opportunity or sufficient time in the 11 day period between their arrest and trial to prepare properly for the trial on the outcome of which their lives and liberty depended;

(d) They were in prison in a jail situated in a city far away from their home, where their parents and kinsfolk resided and they had no opportunity to communicate with such parents and kinsfolk, who, when they finally learned [fol. 96] of the defendants' plight, dared not visit them for fear of personal violence from a hostile and excited populace;

(e) Due to race feeling and prejudice which prevailed in the county where the trial was held, they could not have and were denied a fair and impartial trial before an unbiased and unprejudiced jury;

(f) Immature in years and lacking the advantages of an education, they were too ignorant and did not know how

to prepare for trial or how to obtain the attendance of their witnesses in court or how to obtain the services of an attorney and the financial means with which to pay for such services, and they were entirely unacquainted and ignorant of the rules and principles of law;

(g) repeatedly threatened, intimidated and put in fear of death, they neither knew how nor could communicate with their parents to employ an attorney in their case and to advise them about their rights until the very day when the case was called for trial;

(h) continuously and throughout the trial, a crowd of people dominated by prejudice and hostility towards the defendants filled up the court room and by bearing and demeanor influenced the jury adversely to the defendants;

(i) that while the defendants were on trial, a crowd of people to the number of about ten thousand, gathered from among the inhabitants of the county where the trial was on and adjacent counties, with a band of music playing noisily, surrounded the court court and enacted demonstrations hostile to the defendants, all of which the jury could not but have known;

(j) that the defendants were tried in a county where mob hostility towards them raged with such violence that the Sheriff of said county and the Governor of the State of Alabama deemed it necessary to call out a military force to protect these defendants against a threatened lynching by the mob which assembled round the jail where they were held, and to guard them on the way from the jail to the court house and back, and to surround and protect the court house during the entire trial against threatened mob violence to defendants and to guard them after trial back to jail, all to prevent the threat made to lynch the defendants from being carried out;

(k) that the trial of the defendants, who with seven other negro boys, were charged with the crime of rape, alleged to have been committed against the two white women, was conducted under stress of great excitement, mob [fol. 97] hostility, lust and vindictiveness, and at a time when these evil passions and race prejudice completely dominated the minds of the inhabitants of this county and

adjacent counties and were further stimulated by the county's and adjacent counties' newspapers, which published in advance of and during the trial of the defendants the supposed details of the defendants' crime and their guilt in headlines and language which screamed with a lust born of hate and race prejudice and appealed to vicious and degrading lynch sentiment which they roused in and fed to the people of this county and adjacent counties, thereby making it impossible for these defendants, as well as the other defendants, to have the benefit of a fair and impartial trial, and rendering the verdict of the jury and the judgment rendered thereon illegal and void; and for these reasons a new trial should be granted.

IV. The court erred in not questioning and in failing to qualify the trial jurors as to race prejudice and as to whether or not they could and would, in view of the fact that the defendants were negroes and the complain-t and prosecuting witness a white woman, give the defendants a fair, impartial and unprejudiced trial, and the court further erred in failing to call this fact to the attention of the jurors; and if it had appeared that any juror entertained a prejudice in regard to negroes or that any juror could not or would not, in view of the fact that the defendants were negroes and the complainant and prosecuting witness a white woman, give the defendants a fair, impartial and unprejudiced trial, such juror should have been disqualified and discharged from jury duty. The failure of the court in this respect was a denial of the defendants' rights under the Constitution of the United States, Amendment 14, Section 1, For this reason a new trial should be granted.

V. The exclusion of negroes from the list of jurors from which the defendants' rights under the Constitution of the United States, Amendment 14, Section 1, and a new trial should be granted.

VI. The court erred in that it permitted the jurors to remain in the court room during the preliminary argument and discussion of the case between the court and a group of attorneys appointed by the court to represent the defendants. This argument and discussion between the court and counsel was calculated to and did prejudice the minds of the jurors. A new trial should therefore be granted.

VII. A new trial should be granted in that public senti- [fol. 98] ment and feeling against the defendants and the crime charged and the language of the newspaper which published the same throughout the northern part of the State of Alabama and the States of Tennessee and Georgia were of such a character that the defendants could not get a fair, impartial and unbiased jury.

VIII. The verdict of the jury and judgment entered thereon are supported by no competent or sufficient legal evidence, that they are against the weight of evidence and against the law, and that all the credible evidence preponderates against the verdict of the jury and that the evidence adduced at the trial failed to establish the guilt of these defendants beyond a reasonable doubt; for these reasons, a new trial should be granted.

IX. A new trial should be granted because of evidence which has been discovered since the trial of the case tending to prove that the defendants are innocent of the charge made against them, and which said evidence the defendants did not and could not know and discover before the trial. Said newly discovered evidence will be properly presented to the court on the day of the argument of this motion for a new trial.

X. The court erred in refusing to permit defendants' counsel to interrogate the prosecuting witness, Victoria Price, touching her character and reputation as a common prostitute, and the court's refusal to allow such evidence and the interrogation of the prosecuting witness thereon was reversible error, for which a new trial should be granted.

XI. The court committed error in refusing to permit defendants' counsel to ask the doctor, who had examined Victoria Price, as to whether or not she suffered from a vener-al disease. A new trial should therefore be granted.

XII. A new trial should be granted in that the court committed error in failing to charge the jury as to consciousness of innocence, evidenced by the fact that the defendants, although they knew of the severity with which the crime of rape is punished and the swiftness with which punishment is visited in the South, remained on the train

and made no effort to flee, a circumstance which, together with their conduct on the day of their arrest and after, supports the inference of defendants' innocence; the failure of the court to state these facts in his charge and to instruct the jury as to the law thereon was reversible error.

XIII. A new trial should be granted in that the state, although it had in its control a number of white boys who [fol. 99] were on the train when the alleged crime of rape was committed, among them a boy named Gilley, who the indictment establishes, testified before the grand jury, failed to produce and call them, and especially Gilley, as witness to support the testimony of the prosecuting witness, Victoria Price, the inference being inescapable that if the testimony of such witnesses, and especially the said Gilley, would have supported the testimony of the prosecuting witness, Victoria Price, the State most certainly would have produced them in court as witnesses for the prosecution. Nor did the state offer any reason for not producing these witnesses. The state's failure in this respect not only throws grave suspicion upon the testimony of the prosecuting witness, Victoria Price, but completely invalidates and impeaches her testimony. The fact that these boys, and especially Gilley, in the control of the state were not produced as witnesses in court and were not permitted to testify, supports the inference that their testimony would not have benefitted the prosecution but would have benefited the defendants, and moreover, would have exonerated the defendants.

XIV. A new trial should be granted in that the proof in the record of the trial establishes the following: that the train on which Victoria Price and Ruby Bates claim to have been riding had on it from fifteen to eighteen negro boys and seven white boys; that between the time of the fight alleged to have been had between the negro and white boys in the neighborhood of Stevenson, Alabama, and the time this train reached Paint Rock, Alabama, about forty or fifty minutes elapsed; that approximately from three to six of the negro boys had left the train between the time it left Stevenson, Alabama, and the time it reached Paint Rock, Alabama; assuming, therefore, as it is claimed, without, however, conceding, that all this trouble occurred

while this train was in Jackson County, Alabama, the time was too brief for everything to have happened as contended for and by Victoria Price and Ruby Bates; and that, furthermore, since some of the negro boys were not arrested, it is impossible for these girls to identify positively all the members of the crowd and to make such identification and proof beyond a reasonable doubt.

XV. The court further erred in permitting the prosecuting attorney to put leading questions on direct examination to the State's witnesses, and for this reason a new trial should be granted.

XVI. The court erred in refusing to permit defendants' counsel to interrogate the prosecuting witness, Victoria Price, as to whether or not she was ever in jail prior to her appearance as complainant in this case; for which a new trial should be granted.

[fol. 100] XVII. A new trial should be granted in that the court's charge to the jury was unfair and prejudicial.

G. W. Chamlee, Atty. for Defendants.

[File endorsement omitted.]

The hearing of said motion as last amended was continued by the court from time to time until the 5th day of June, 1931, at which time the following proceedings thereon were had:

T. G. Elkins, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is T. G. Elkins. I live ten miles north of Scottsboro on Little Mud Creek. I was a member of the jury before when five defendants were tried. I don't remember their names. I was on Jury No. 3. I was not in the court house when the jury reported in the Haywood Patterson case. I was not in the court house when they reported in the Weems and Norris case. I don't know where I was,

only I guess I was at Davis' store. That was the second day of the trial of these negroes when the jury reported. That was when the first case was tried. I heard someone out on the street holler "Whoopee," but I didn't pay any attention. When I walked out I asked what the fuss was, and they said the jury had reported. That didn't have any bearing on my decision. I did hear a fuss, but that didn't have any influence on me. I cannot say about a brass band playing on the streets of Scottsboro within a few minutes after the jury reported. If I heard a brass band that afternoon after the jury reported I don't know it. I didn't hear one the next day. I heard a band some time after that. I don't remember what day it was. I couldn't say about that. I heard a band some time but I didn't pay any attention. I was leaving town at the time. I cannot say whether it was the day the jury reported in that case. I gave it no consideration.

I read the Scottsboro papers about the attack on these girls. I believe I read the Chattanooga papers. I think those papers said these men, or some of them had confessed their guilt.

When I was examined as a juror, I was asked questions as to whether or not I held racial prejudice. I don't remember just what the question was about. I was asked if I held any racial prejudice, and my answer was no. I couldn't [fol. 101] say positively who asked that question. There is a hosiery mill band in Scottsboro. I couldn't tell you how many men are members of that band. I have seen them on parade a time or two, I couldn't tell you how many members in that band. I have seen them at a show here. I have not seen them recently. I live twelve miles from the court house by road. I had not been to Scottsboro previous to the day I was on the jury; that was the first day I had been here since it came up. That was Monday, I believe. I was not put on the jury the first day I got here. I was put on Jury No. 3. That was the jury that tried the five defendants. I was in Davis' store when the jury reported in the Norris and Weems case. I was not in the court house. Davis' store is something like a half block from the court house. The hosiery mill is three or four blocks from the court house. I couldn't say what time of the day the Norris and Weems jury reported. I didn't pay any atten-

tion to the time of the day. It was in the latter part of the afternoon. I didn't pay any attention to the hour.

I have no idea how many people were around the court house at that time; there were several here, a pretty good sized crowd. The military authorities were guarding the court house in Scottsboro at the time I was sitting on the jury. They had machine guns. I suppose the reason for that was to keep down mob violence; that is what I presume it was for. However, I saw no intention of mob violence. There were something over one hundred armed men here in all, including the machine gun crowd. They were guarding the court house yard and keeping the crowd off of the court house grounds. They also had them inside the court house, upstairs. I don't know whether they searched the people to see if they were armed. They didn't search me. I couldn't say about them searching others. I did not hear either one of the other trials. I was sitting on the jury part of the time when the fourth trial was going on. I was sitting on the jury where they tried the man and the jury disagreed. I did not try that case. I was on number three where they tried five of them together. Jury No. 3 had the other case at that time. I didn't hear the fourth case. They were on this other case.

I saw several heavily armed soldiers in the court house, three or four, I couldn't say how many, as well as out in the street, during the progress of these trials.

[fol. 102] W. G. SARTIN, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is W. G. Sartin. I live out on Sand Mountain. I was one of the jurors that tried five of the negro boys charged with rape. When the jury reported in the Haywood Patterson case, I should judge that I was down at the drug store. I suppose the Weems and Norris case, the first case tried, is the one you were speaking of. I do not recall what time the jury reported. I couldn't say about what time it was. It was in the afternoon, I think. I am not sure. I suppose it was after that report was made

that I heard some noise. I just heard them hollering. I don't know as I heard any clapping of hands. I heard them hollering. They were hollering around here on the square, seemingly, around the court house. I think the court house is within the square. There were several people around the court house at the time. I wouldn't say there were several thousand people around here. I don't know how many there was. I did not hear a brass band playing within a few minutes after the jury reported. I think it was that evening I heard the brass band playing. I wouldn't say positively. Any way, I heard one playing. I don't know whether that was the hosiery mill band. I was here in the court house at the time. There were several units of the State Militia around the court house during the progress of the trial of those negroes. I don't know how many armed soldiers there were here. I think there were eight machine guns around here. There were some boxes of tear bombs sitting around. I suppose there were soldiers in the court house. They were not in the court room when I was in here. After I heard that demonstration I served on the jury in one case where five of the negroes were tried.

Cross-examination:

When I heard this demonstration about which I spoke, I was down about Payne's drug store. I heard some hollering. I heard a band; that is what I thought it was. When the band was playing I taken it to be after court had adjourned and the soldiers ready to go home; at the time I was in the court room, when it first began. I was not up here immediately after the rendition of the verdict. I am not sure just what time it was when the band was playing here on the square. I know it was after court adjourned. They were playing on the south side of the square. The playing of the band or the hollering did not in the least influence me in my verdict. I did not know for what purpose, or what cause, or why they were hollering. When it began, me and Mr. H. H. Hennegan were standing [fol. 103] there talking. I don'- know what the hollering was about. When I heard the band playing, I didn't know what that was about.

Redirect examination:

Later I heard first one and another state what the hollering was about. They said they began hollering when the verdict was rendered. You can ask the court about what the verdict was. The man I was talking to said his information was that they had returned a verdict. I later found out what the hollering was about. That is what gave rise to it because the verdict was returned. I learned what the verdict was. I found out what they said about it. When I sat on the jury and tried the five, I knew what this demonstration was about in the other case. Somebody had already told me but I don't know everything people tell me. When I went on the jury that tried the five negroes, Case No. 3, I understood what the people had said about it. They said a verdict had been rendered. I was down on the corner at Payne's drug store when I heard that noise. I don't know how far that is from the court house. I didn't measure it. It is a short ways down to the corner. I cannot tell you how far it is. I don't know how many people I heard hollering; there were several. I don't know whether I heard hollering up in the court house. The first time I seen the band on the street was just before sundown. I think it was the same afternoon I heard the hollering. I do not know what that band was playing.

Recross-examination:

During the time of the trial, I did not see a demonstration about a truck with a big wheel and tire. I don't know what that was for. I did not see that truck pulling a big tire around the square.

L. R. JONES, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

My name is L. R. Jones. I live about three miles from Bridgeport. I was on the jury that tried one or more of the nine negroes convicted of rape. I was on the third jury, the one that tried five of the negroes. I was not in the court house when the jury returned its verdict in the first case tried. I was at home, or on my way home. I had left the

court room, and left Scottsboro. I didn'- hear any demonstration of any sort.

J. M. BARNES, a witness for movants, having been duly sworn, testified as follows:

[fol. 104] Direct examination:

I live at Bridgeport. I am one of the juries that tried one or more of the nine negroes convicted of rape here some time ago. I was on the third jury. That was the jury that tried five of them. I don't know where I was when the jury reported in the first case, the Weems and Norris case, but I was somewhere between Scottsboro and Bridgeport or at Bridgeport. I did not hear any demonstration after the jury reported. I was not in Scottsboro.

WILLIE J. WELLS, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live four miles above Paint Rock. I was on the jury that tried five of the negroes convicted of rape in this court house. I was in Scottsboro when the first jury reported, in the Weems and Norris case. I did not hear any sort of demonstration, any noise, immediately after the jury reported. I never paid any attention to any hollering. I couldn't tell you where I was. I heard a band playing. I couldn't tell you what time it was I heard a band playing. I don't remember whether it was in the afternoon. I didn't have any time-piece, and don't remember what time it was.

I was not at Paint Rock when these men were arrested. I guess I was at home; I don't know. I live four miles, back up the river from Paint Rock. I heard about this trouble. I just talked with people like we always do about such as that. I never heard no big lot of talk. Nobody in my neighborhood came to Scottsboro. I live in a farming section. I have never been on a jury before. I remember the questions that were asked me before they put me on the jury.

Counsel for movants then propounded to the witness the following question:

Q. What did they ask you to qualify as a juror?

The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Counsel for movants thereupon propounded to the witness the following question:

Q. Were you asked whether or not you held racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

[fol. 105] Richard Hill, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live in Paint Rock Valley. I was on the jury that tried some negroes convicted here. I was on the one that tried five of them. At the time the jury in the first case reported, I was in town somewhere. I was outside the court house, somewhere on the street. I don't know what time of day that jury reported. It was in the evening some time. I heard some noise, hollering. I didn't pay any attention to it. I just heard hollering, coming up the street. There were several people around the court house at the time. I don't know whether the National Guard was all around the court house and inside as well; I was not up here. I don't know as I later saw National Guardsmen in the court house. I was not back up here that evening. Later, when I came in the court room, I saw National Guardsmen in the court room. They had machine guns and other arms around the court house. I don't know for what purpose they had the arms. I did not hear a brass band playing after the jury report. Nobody told me what the hollering was about. I never did learn what it was about. I have heard them talking since what it was

about. I heard that some time the next week. I do not know what the population of Scottsboro is.

Cross-examination:

I said I never heard a band playing until the next week after the trial.

Roy Wilbourne, a witness for movants, having been duly sworn, testified as follows:

I live in Paint Rock Valley, about thirty miles from here. I was on the jury that tried some of these negroes convicted of rape. I was on the one that tried five of them. I had gone home that evening when the jury reported this case. I was outside of Scottsboro. I did not hear any demonstration. I had left Scottsboro before the jury reported.

I don't know as I heard about the demonstration the next morning. I heard about the vereict. I don't know as anybody told me what happened when the verdict was reported in the court house. I have heard since then all about it. I don't know whether I heard about the clapping of hands and hollering or not. I went home and was not here. I don't remember whether it was the next day, or the next day, when I was put on the next jury, the case I tried.

Counsel of movant thereupon propounded to the witness the following question:

Q. Do you remember whether or not when you were examined—when you were examined as a juror, did they ask you whether or not you had racial prejudice?

The State objected to the question, the court sustained the objection and to this ruling of the court movants duly and legally reserved an exception.

[fol. 106] W. C. Scogin, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live on Sand Mountain. I was on the jury that tried some of these nine negroes. I was on the third jury, the

one that tried five of them. When the jury reported in the first one of these cases, I was across from the sidewalk over there, towards the court house. I asked some man I met over there, and he told me the jury had reported in that case. I heard a lot of noise, hollering and shouts; several hollered. There were several around the court house. I do not mean several thousand but a good many people gathered around the court house. I don't suppose that demonstration, that hollering, lasted a minute. I don't think there was a brass band on the street a few minutes later that day. That afternoon I did not hear a brass band parading around on the streets, and playing. It could have been day before that—I don't remember what day it was—it was about one o'clock this brass band was playing out there, somewhere a little after one o'clock. It was the next day, I think, after the jury reported. I am pretty positive it was the next evening after this first jury reported, because we were summoned to be here at one o'clock, and we were in the court room when this happened. I saw National Guardsmen in the court room and about the court house.

When this happened I was on the street between here and the sidewalk over there. I don't know how many men I heard hollering down there. Then I came on to the court house, out in the yard.

I had been in the court house that day. The crowd in the court house was about the same as the crowd in the court house now, I guess. I have no idea how many men are in the court house now. It looks like there are all that can be seated and a good many standing up. There are several standing around the walls.

Counsel for movants thereupon propounded to the witness the following question:

Q. How many would you say down this side of the court room are standing up?

The State objected to the question on the ground that it calls for immaterial and irrelevant testimony. The court sustained the objection and to this ruling of the court movants duly and legally reserved an exception.

Counsel for movants then propounded to the witness the following question:

When you were qualified as a juror were you asked as to whether or not you held racial prejudice?

[fol. 107] The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

There were not very many people in the court house yard at that time.

There were several gathered around, but not a great crowd. It was late in the evening.

B. M. Holloway, a witness for movants, having been duly sworn, testified as follows:

Cross-examination:

I live on Sand Mountain. I was on the jury that tried some of these negroes. I was on the one that tried five. I was down town when the jury reported in the first one of those cases. I was pretty close to Payne's drug store. That is right across the street from the court house. I heard hollering after the first jury reported. I did not hear a brass band playing within a few minutes after it reported. I left town in a few minutes after that. When I heard that hollering I heard someone say the jury had reported, and I walked on. I didn't pay any attention to it. They did not tell me about it personally. I just heard people talking. They didn't say that was the reason for the demonstration. I just heard them yelling. It was generally understood by everybody that that was the reason for it. I think it was the next day after that I sat on the jury. I wouldn't say because I am not sure where the soldiers were that were guarding the court house, at the time of this demonstration.

Counsel for movants thereupon propounded to the witness the following question:

When you were put on the jury in the court house the next day to try the five, were you asked the question whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

I was on the third jury. I was about town while the other two cases were tried. I was about the court house and heard people talking about the Ford agency putting on a demonstration of cars during the trial and had a talking machine on wheels, on a truck or something like that. I heard the organ. I heard them going around. The Judge called us back at one o'clock. While I was in the trial, I heard the organ and learned the fact that it was the Ford [fol. 108] agency playing the organ. I heard they had different kinds of Ford cars going around.

Redirect examination:

I didn't see that. I was in the court room.

Counsel for movants thereupon propounded to the witness the following question:

Q. Before you went on the jury did anybody tell you what these negroes were going to be tried for?

The State objected to the question, the court sustained the objections, and to this ruling of the Court movants separately and severally reserved an exception.

C. C. Allen, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Olalee. I was on the jury that tried some of these negroes charged with rape. I was on the third jury, the one that tried the five of them. I was not in court here when the jury reported the first case tried. I was outside of the city of Scottsboro. We were excused and I left town. I did not hear any demonstration or noise. Later on I heard a little something about there having been a demonstration. I heard that when I came to town the next morning. I didn't hear any of it myself. I was

out of town. I heard a little about the demonstration, but not much said about it.

I did not hear anyone of the other trials. When they tried the first case, I was up in the country. I left here when they drawed the jury that went on the first case. I left here and went up to my aunt's, seven or eight miles away. I went home the next night. I was not here when they started the case of Haywood Patterson. We were dismissed and I left town and went home that night.

Counsel for movants thereupon propounded to the witness the following question:

Q. When you were qualified as a juror were you questioned on the subject of whether or not you entertained racial prejudice?

The State objected to the question, the court sustained the objection, and to this ruling of the court movants separately and severally reserved an exception.

Cross-examination:

I am not a minister of the Gospel.

[fol. 109] Lee Hicks, a witness for movants, having been duly sworn testified as follows:

Direct examination:

I live at Olalee, Alabama. I was on the jury that tried five of these negroes charged with rape. That was the third jury. I was not in the city of Scottsboro when the jury reported in the first case. I left as soon as they excused us and went out in the country about twelve miles. I came back to Scottsboro the next morning. At that time I did not hear there had been a demonstration by yelling and hollering. I didn't hear anything about that at all, neither did I hear anything about a brass band being on the street a few minutes afterwards. The court house was heavily guarded inside and out by the National Guardsmen during the progress of those trials. Nobody said a word to me about the demonstration. I didn't talk to anybody at all.

Counsel for movants thereupon propounded to the witness the following question:

Q. When they examined you as a juror were you asked the question as to whether or not you entertained racial prejudice?

The State objected to the question, the Court sustained the objection, and to this ruling of the Court movants separately and severally reserved an exception.

LUTHER BALLARD, a witness for movants, having been duly sworn, testified as follows:

Direct examination:

I live at Stevenson, Alabama. I was on the jury which tried some of the negroes charged with rape. I was on the third jury, the one that tried five of them, I believe. When the jury in the first one of those cases reported, I was between here and Stevenson, or at Stevenson. I was outside of the City of Scottsboro. I did not hear the demonstration immediately following the report of the jury. I came back to Scottsboro the next morning. I did not hear discussion on the street, people talking around about the demonstration that happened the day before. I never heard a word about it. I didn't hear anybody mention it at all. I suppose I came right on inside the court house. There was not a big crowd around the court house all during the progress of the trial. The crowd had lessened down. There were some people here. National Guardsmen were armed and stationed inside and outside of the court house. I understood that the National Guard was at the court house to protect the negroes. I don't [fol. 110] know what they were to protect them from and who; just said to protect the negroes. I never did hear the word "mob" suggested. They were just here for protection.

JOHN VENSON, a witness for the state, having been duly sworn, testified as follows:

Direct examination:

My name is John Venson. While the trial of these negroes was in progress here the Ford people made a demon-

stration of cars. We had a Ford caravan of commercial trucks displayed, different bodies. I think there were about twenty-eight trucks. They came on Tuesday. They brought some music with them, had a graphophone with an amplifier on it, installed on a car. They had a parade here in town. I think it was about four o'clock. That amplifier made music so it could be heard for several blocks. That had no connection in the world with this trial. The hosiery mill band came out at six o'clock in the afternoon and played for Guard Mount. The soldiers were putting on Guard Mount. That was about six o'clock. I don't know anything about the adjournment of court, but it was about six o'clock. They broke up our demonstration, and I went over there. I didn't know until Monday that this Ford caravan was coming.

Cross-examination:

I never did know when the jury reported in the first case. I was down here somewhere about the square at that time. I did not hear the yelling and hollering. I remember while we were down there on the corner after we had our parade and was giving a little musical entertainment someone came along and told about the jury reporting. I remember that, but I heard no yelling or anything to indicate that there was anything going on about the court house. There was a crowd, but most of the crowd was down there when we stopped. They were down there to see our demonstration. There was a crowd in town all day. There were more people in Scottsboro the first day than on Tuesday. I don't know how many were here the first day. There was a big crowd. I don't think there were ten thousand. I wouldn't guess there was five thousand people at any one time on the street; I don't think so, but I don't know. The court house never was full. There was a crowd around the court house. There were National Guard officers around. I just remember while we were down there that evening—I know it was before the band concert at the Guard Mount—someone came along and told me the jury had reported and told me what the verdict was.

[fol. 111] The soldiers putting on Guard Mount and the band playing for them broke up our demonstration. I don't know why the soldiers were putting on Guard Mount. The

band played while they were putting on Guard Mount. I don't know what piece they were playing. I had heard them before. I had been on Guard Mount before. I don't know any of the pieces. That music lasted thirty minutes or more. I think I stayed out there until I was late for supper.

Redirect examination:

I did not see any mountaineers coming along on mules, carrying long rifles. I didn't see any rifles except what the soldiers had. I did not see any of our citizens from this county coming in and bearing any kind of arms, guns or rifles. I did not see any of them come in on ox carts.

Recross-examination:

I guess Ford cars have put the ox carts out of business, and freed the mules also.

Redirect examination:

Guard Mount by the militia is somewhat of a novelty to the average citizen. I suppose that was the only one they put on while here. In order to put on Guard Mount it is necessary to have music.

On said date, the 5th day of June, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits, filed by defendants, the joint affidavit of T. B. Reynolds, W. M. Wellman and J. V. Pollarde, which said affidavit is in words and figures as follows, to-wit:

IN CIRCUIT COURT OF JACKSON COUNTY

No-. 2402 and 2403

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

AFFIDAVIT OF T. B. REYNOLDS, W. M. WELLMAN, AND J. V. POLLARDE

We, the undersigned, make oath in due form that we reside in the City of Huntsville, Alabama, and are superin-

tendent, Secretary and Treasurer, and Pay master, respectively, and in the order in which our names are signed of The Margaret Mill of Huntsville, Alabama. We further certify that we personally know Victoria Price, a white girl who was in the employ of this Mill during 1929 and 1930. This is the same Victoria Price who alleges that she and Ruby Bates were raped by some negroes on a freight train in Jackson County, Alabama, some time in the early part of this year.

We have this day examined the payroll records in our [fol. 112] office and find that Victoria Price was in our constant employ during the months of October, November, December, 1920, and January, February, March and April, 1930. The records show that she worked each week during the above months. We further certify that she was a good worker and her character around and in the mill was good, except that she possibly had a fight or two. We further certify that from our knowledge of her and opportunity to observe her over a long period of time, she was absolutely above having anything wrong to do with negro men.

The other girl, Ruby Bates who is said to have been raped at the same time and along with Victoria Price came to our Mill about six to eight months prior to the time they were said to have been raped, and she was quiet and reserved and bore a splendid character, as far as we know. We never heard one thing against her.

(Signed) T. N. Reynolds, (Signed) W. M. Wellman, (Signed) J. V. Pollarde, Affiants.

STATE OF ALABAMA,
Madison County:

Sworn and subscribed to before me, this the 3rd day of June, 1931. (Signed) Sallie A. Martin, Notary Public. (Seal.)

[File endorsement omitted.]

On June 6, 1931, the State filed in said cause, in rebuttal of the foregoing affidavits filed by defendants, the affidavit of L. L. Maynor, which said affidavit is in words and figures as follows, to-wit:

AFFIDAVIT OF L. L. MAYNOR

IN CIRCUIT COURT OF JACKSON COUNTY

STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Affidavit

STATE OF ALABAMA,
Jackson County:

L. L. Maynor makes oath in due form and according to law as follows:

My name is L. L. Maynor. I was born in Hollywood, [fol. 113] Jackson County, Alabama, and am 39 years old. For the last 17 years, or thereabouts, I have lived in Madison County, Alabama, and for about the last eight years, I have lived in Huntsville. In August, 1928, I went to the home of Mrs. Emma Bates in Huntsville, Alabama, to board and have been boarding in her home since that time. She is the mother of Ruby Bates, who, together with Victoria Price, whom I also know, was said to have been raped by some negroes in Jackson County some two or three months ago.

During all this time that I was at Mrs. Bates, I was either hauling logs off of Monte Sano Mountain or working with the Allied Engineer Company and would return to Mrs. Bates every evening. During this time Ruby Bates stayed at home and kept house for her mother, who was working at the Lincoln Cotton mills in Huntsville. I am absolutely certain that Ruby Bates did not leave home and go to Chattanooga, Tennessee, any time during 1929 or 1930.

Ruby Bates was a quiet, modest girl and much of the time while I was there, she would go to church and Sunday school and I never heard any question of her character up until a little while before this trouble, and that was after she had begun to associate with Victoria Price.

There are dozens if not hundreds of people in Huntsville who know that Ruby Bates did not live in Chattanooga, Tennessee.

(Signed) L. L. Maynor, Affiant.

Sworn and subscribed to before me this the 6th day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On June 13, 1931, the defendant Clarence Norris filed in said cause, in support of said motion for new trial, the following affidavit:

AFFIDAVIT OF CLARENCE NORRIS

STATE OF ALABAMA,
Montgomery County:

Before me, Lee L. Cawthon, a Notary Public, in and for said County and State, personally appeared Clarence Norris, made known to me as such, and having been duly sworn to speak the truth, the whole truth, and nothing but the truth, the said Clarence Norris deposes and says as follows:

[fol. 114] My name is Clarence Norris, and I am at present confined in Kilby Prison, having been tried at Scottsboro, Jackson County, Alabama, on the 6th day of April, 1931, before Judge A. E. Hawkins, and having been found guilty of rape and sentenced to death by electrocution; and I state the truth and facts to be as follows:

I was put on trial for the offense of rape in Scottsboro on April 6, 1931, before the aforesaid Judge and a jury, and testified on that trial on my own behalf.

I was represented in that court by Mr. Roddy and Mr. Milo Moody, an attorney of Scottsboro, who was appointed by the court to defend me. A short while before, I was put on the witness stand, I talked to my lawyers, who were present in a room of the court house with the other negro prisoners who were charged with the same offense, namely, Haywood Patterson, Ozie Powell, Willie Roberson, Andy

Wright, Olen Montgomery, Eugene Williams and Charlie Weems, and at that time was questioned by Mr. Moody and Mr. Roddy, and I told those lawyers at that time that I did not rape or have anything to do with either of the two white girls who were on the train, and that none of the other defendants who were charged with that offense did. On the 25th day of March, 1931, I had been on a freight train coming from Chattanooga, Tennessee, and was bound for Sheffield, Alabama, to visit my aunt, who lives there, in order to get a job. I had a job in Atlanta, Georgia, working for the Capitol Stone Company, and was left off. The only man that I knew on the freight train when I boarded it at Chattanooga was Charlie Weems, colored. I didn't know until I got off the train at Paint Rock that Charlie Weems had boarded the same train. I did not see any other negro boys on the train, and did not see any white boys on the train. Neither did I see white girls in overalls, or otherwise dressed, on the freight train, until I arrived at Paint Rock. I rode on an oil car, with my feet hanging over the side. The oil car was back toward the cab-car. I am nineteen years old, and my mother, Ida Norris, lives at Molena, Georgia. My home was in Atlanta, and I had been living there about five years, and had never been in any trouble, except that I was arrested for late hours one time and served a term of ten days hard labor at Atlanta, Georgia. I was arrested after arriving at Paint Rock by some officers, and I was taken across the country and put in jail at Scottsboro on the night that I was arrested about six o'clock. There were eight other negro boys arrested besides myself, and taken to the Scottsboro jail. About an hour after we arrived in the Scottsboro jail, there were four men who came and took [fol. 115] me away from where the other prisoners were to a cell in the jail and beat me there with sticks. I was slapped and kicked and told that if I did not tell that the other negro boys who were arrested on the train had something to do with those white girls, that they would kill me; that they would shoot me down in the court house. I was afraid of them, and told them that I would do what they said. I was asked by one of these men if the negro boys on the train did not throw the white men off, and I told them I didn't see that, and then they slapped and beat

me; and then they asked me if I saw any of those negro boys on the train have anything to do with those girls, and I told them no, and they went to beating on me again. They told me I had better get up in the court house and say that, and I told them yes, I would do it. I was moved with the other prisoners from the Scottsboro jail to Gadsden jail the next day after we were put in the Scottsboro jail. We stayed in the Gadsden jail two weeks, and about two days before the trial in Scottsboro, several men came in the jail where the negro prisoners were, and beat all nine of the colored boys that had been arrested and taken off the train. They tried to make us tell that we had had something to do with the white women on the train. All of the prisoners, even after they were beaten, said they did not have anything to do with the white girls. One of the men that beat us turned to me and said, "You told me down yonder at Scottsboro jail that you would tell it," and then I told him that I would do what I told him and say in court that I saw these other prisoners have something to do with the white girls on the train; and this man told me that if I didn't do it, he was going to shoot me down in the court. When I testified in my trial at Scottsboro, I was afraid for my life, and did not there testify to the true facts. When I was on the stand testifying for myself, I stated that I was not engaged in a fight, but saw a fight in the gondola car. This was not true. I did not see any fight on the train, and did not see any fight in the gondola car; but made this statement that the negro boys and white boys were fighting in that car in order to save my life, thinking that I would be shot down if I did not make this statement. I stated in my testimony that Haywood Patterson started the fight, and that he came across the flat car where I was, him and the rest of the colored boys, and that he, Haywood Patterson, said he was going over there to run the white boys off and going to have something to do with the white girls. All of this statement was untrue; nothing of that kind happened in my presence. I did not see Haywood Patterson and other negro men come across the flat car, or any other car, and say they were going to run the white boys off and were going to have something to do with the [fol. 116] white girls. I made this statement because I was fearful of losing my life in the court room while I was testifying. I made the statement in my testimony that these

negro men knew the girls were on the train and that the white boys were with the white girls on the gondola car. This statement was not true, as I did not see anything of the kind. I did not see any white girls at all, and any statement I made to the contrary on the trial was untrue and was made because I was afraid of losing my life by those who had beaten me and threatened me before hand. I did not see any white boys fall off or get off the train, and I did not ask two white boys what they were getting off the train for, and I did not get on the train to see if they were being put off. I did not get up on the box car and did not see the negroes putting the white boys off. All this statement was made up by me in the hope of saving myself from the threats which had been made. I did not see any negro boy having a knife around a white boy's neck, trying to push him off the train, and I did not see any other boy take hold of him and pull him back up in the car. I did not see any fight or trouble or difficulty on the train at all. When I testified that I saw Charlie Weems in the gondola, I was testifying to something that was untrue, as I made that up. I did not see Charlie Weems or any other negro in the gondola. I do not know what a gondola car is. I did not see any white girls in overalls in any car on that train, and I did not see any negro boys or men in any car on that train with white girls in overalls. When I answered in my testimony that I saw every one of the negro boys have something to do with the white girls after they put the white boys off the train, I was telling an untruth. I did nothing of the kind, but was testifying in order to save myself from what I thought was certain death if I did not swear this way. I was not sitting on the box car and did not see any one of these negro boys have anything to do with the white girls or rape them or do anything to them. I did not see them together at any time on that train, but testified to this on my trial because I was afraid that I would be shot down in the court room, as the men told me they would. I was never on a box car but was on an oil tank car, all the way from Chattanooga to Paint Rock. In my testimony, I stated that I saw Charlie Weems rape one of these girls, but that was not true. I saw nothing of the kind, but testified to this because I was afraid for my life under the threats which had been made and the punishment which has been inflicted on me. I

testified truthfully on my trial that I didn't have a pearl-handled knife on me when I was arrested. If any of [fol. 117] the officers found such a knife on any of the boys, it was not on me, as I did not have such a knife on the train or in my pockets when I was arrested. So far as I know, of my own knowledge, no one of the negro boys raped either of the white girls. I was not with them and did not see anything of the kind. When I testified on my trial that a certain one of the negro prisoners in the court room had a knife around one of the white girl's throat, point him out in the court room, I was telling something that is not true, under the influence of the threats and fear and bodily violence that had been inflicted on me twice before the trial. I did not see any negro men or boy have a knife around the throat of any white girl on that train. I did not see any white girls lying down when I got up on the box car, and did not see any negro boy have a knife on the throat of either of them. My testimony on the trial to that effect was forced out of me by fear that I would be shot down in the court room. I did not see any negro boy or man on that train force any white girl or woman to lie down while other negro boys or men raped her, and my testimony to that effect is untrue and was forced out of me by fear for my life under the facts I have stated above. I did not see any white girls lying down when I got up on the box car, and did not see any overalls lying in the car anywhere, and my testimony to that effect on the trial is untrue; such testimony was forced out of me by fear and the threats that had been made to take my life in the court room if I did not testify to such facts. I was on the ground, off the train, when I was arrested. I got off the oil tank car and was on the ground when arrested at Paint Rock. I was on the train, but not in the gondola. My testimony to the effect that I could see the faces of the women, but could not see their bodies or clothing, was untrue, and was made under fear and on account of the threats and bodily harm I have mentioned before. So far as I know, or of my own knowledge, there was no fight between white men and negroes on the train, and no raping of white girls by any negroes; and any statement I have made to the contrary on my trial was under a sense of fear, because I was afraid they would shoot me down in the court room, as they told me. I told my lawyers that I did not see any of the negro men have anything to do with the white girls,

and that was the truth; but I was afraid to tell it that way in court. I never saw any negro men or white men attack any white girls on that train, or do them any harm, and I did not see Charlie Weems ravish any white girl on that train, and did not see him about her.

[fol. 118] I am now in Kilby Prison and am not afraid of bodily harm at the hands of anybody; and the above statements I have made are true, and are made in the prison, in the presence of officer J. F. Partin, of Montgomery, Alabama, who is Deputy Warden of Kilby Prison. No inducements have been offered me to make this statement by anybody, and I have been cautioned to speak the whole truth.

Clarence (his X mark) Norris.

Sworn to and subscribed before me this 10th day of June, 1931. Lee L. Cawthon, Notary Public, Montgomery County, Alabama.

[File endorsement omitted.]

On said date, June 13, 1931, the State filed in said cause, in rebuttal of the affidavits filed by defendants, the affidavit of P. W. Campbell, which said affidavit is in words and figures as follows, to wit:

AFFIDAVIT OF P. W. CAMPBELL

STATE OF ALABAMA,
Jackson County:

P. W. Campbell, being duly sworn, deposes and states as follows:

I am a resident, citizen of Scottsboro, Jackson County, Alabama, and am at this time editor of the Jackson County Sentinel, a newspaper published at Scottsboro.

Some four weeks ago, I went to Chattanooga, Tennessee, in company with J. K. Thompson, County Solicitor of Jackson County, for the purpose of investigating some affidavits which had been made by some negroes in Chat-

tanooga concerning the conduct and character of Victoria Price and Ruby Bates, women who were said to have been raped by some negroes in Jackson County.

We went to the office of Chief Detective Hacket and he placed at our disposal two of his men who went with us to the part of Chattanooga where these negroes lived. After considerable effort, we located some of them with the following results: We found Asberry Clay and his wife, Savannah Clay, and Solicitor Thompson read to them the affidavits which they were said to have made. They both [fol. 119] said that there was certain statements in the affidavits which they did not make and which they did not know were in there. Especially with reference to these women living with negro men. They denied that they had ever seen them conducting themselves in such way. They also stated that they told those who procured the affidavits or statements from them that they were not certain as to whether the women they were talking about were the same women as shown them in pictures taken from one of the Chattanooga papers. They further stated that they did not know the women they had in mind as Victoria Price and Ruby Bates. Asberry Clay stated that he received his dinner and seventy-five cents as payment for the affidavit which he made.

We then found Tom Landers whose affidavit we read to him and he stated that at the time these girls were said to have been in Chattanooga, to-wit, the latter part of '29 and the early part of 1930, he was a convict in the State Penitentiary of Tennessee. He also stated that he told Mr. Chamlee, the attorney responsible for the affidavit, that he could not identify the women shown him in the newspaper clipping.

We then went to a white woman by the name of Mrs. Wooten, who lived on the same street where these negroes said these white girls had been and whom they said the girls had lived with and Mrs. Wooten emphatically stated that no such girls had ever lived with her.

We then went to the City Hall to Police Headquarters where we talked with Mrs. Croft, Police Matron, who said that she had been constantly in the service of the City for the last twenty years or more and was quite certain that no such girls as these two had been up before her charged with

any offense and that if they had, she would have had some recollection of it.

On the other hand, the Police Records in Chattanooga do show that two of the Chattanooga negroes, to wit, Haywood Patterson and Roy and Andy Wright have had Police Records and the Police authorities stated that they were very bad negroes and had given them quite a great deal of trouble.

(Signed) P. W. Campbell, Affiant.

Sworn and subscribed to before me this 13th day of June, 1931. (Signed) C. A. Wann, Clerk Circuit Court.

[File endorsement omitted.]

On June 17, 1931, the State filed in said cause separately and severally the following separate and several rebutting affidavits, to-wit: Affidavit of M. L. Wann; affidavit of M. C. Thomas, affidavit of Charles F. Simmons; joint affi- [fol. 120] davits of Houston Dicus, W. H. Thomason and H. L. Parsons, which said affidavits are in words and figures as follows, to-wit:

AFFIDAVIT OF M. L. WANN

THE STATE OF ALABAMA,
Jackson County:

Before me, Louis Stewart, a Notary Public in and for said County and State, personally appeared M. L. Wann, who, being duly sworn, deposes and says.

That he is now and was on the 26th day of March, 1931, the Sheriff of Jackson County, Alabama; that I was not in Scottsboro at the time the nine negro boys were placed in jail, but arrived about one hour after they were placed in jail at Scottsboro. I found present at the jail my deputy, Charlie Simmons and Charlie Latham, together with the City Marshal, Houston Dicus, with other deputies specially deputized to guard the jail until the arrival of the soldiers.

Immediately on arrival at the jail, I had a conference with my deputies and it was decided to remove the prisoners to

Huntsville, Alabama, or Gadsden, Alabama, and I had the prisoners all handcuffed and they were marching in a body out in the hall of the jail to the top of the stairway, but on seeing that quite a little crowd had gathered below, it was decided, after a conference with my deputies, that we replace the prisoners in their cell and phone the Governor for troops, which I did. I had not heard any talk whatever from the crowd about mob violence of any kind, but out of extreme caution and for the due protection of the prisoners, I did phone the Governor to send troops at once. The prisoners were then replaced in their cell and at no time were they ever separated from each other and at no time was Clarence Norris taken out of his cell by an officer or by anyone else, but he remained with the other prisoners until they were taken charge of by the militia about twelve o'clock that night.

I have read the affidavit of the said Clarence Norris in this case and it is absolutely false from one end to the other. He was treated nicely and humanely at all times while under my charge and no complaint whatever was ever made to me about any mistreatment of any of the nine boys. I was constantly at the jail from the time of my arrival about 5:30 o'clock in the afternoon until the soldiers arrived and of my own personal knowledge the witness, Clarence Norris, was never taken from his cell, other than as above stated, during the entire time he was in my charge up to the time [fol. 121] they were turned over to the soldiers. To my certain knowledge, there was no threats made to him or any of the others during the time they were in my charge and no attempt was ever made to interview them about the alleged crime for which they were charged. My deputy, Mr. Charlie Simmons, and another deputy, C. F. Latham, and the City Marshal, Houston Dicus, and Ex-Sheriff Mack Thomas, was present during the entire time the prisoners were in jail until they were turned over to the soldiers. After the soldiers took charge of the prisoners, they kept a detachment of guards around the cell both night and day during the entire time they were in jail at Scottsboro and there was absolutely no chance for any one to interview the prisoners without their knowledge and consent, and I am quite sure the negro Clarence Norris was never taken out of his cell and treated as he alleges in his affidavit during the time he was in the jail at Scottsboro. I know this as a pure fabrication on his part and superinduced for the sole purpose of

seeking notoriety without any semblance of truth or fact in his statement.

I am quite sure that all of the officers above mentioned will verify this statement and corroborate it. I never as much as discussed the charges with any of the prisoners, nor let anyone else do so other than the attorneys in the case. I never tried to exact any statement from any of them nor did I suffer anyone else to do so during the entire time I had them in charge. The first that I ever heard of any mistreatment of Clarence Norris was when I was shown his affidavit this morning. All the nine boys during the entire time they were in my charge were treated exactly as other prisoners and were given every protection that the law allows, and it was as much of a surprise to me as anyone when he admitted the guilt of his comrades on the witness stand. There was during the time the prisoners were in my charge from twelve to fifteen deputies guarding the jail and the cell in which the boys were incarcerated, and I believe that each and every one will join me in this affidavit in so far as he knows the fact.

M. L. Wann, Sheriff of Jackson County, Alabama.

Sworn and subscribed to before me this 13th day of June, 1931.

Lois Stewart, Notary Public.

[File endorsement omitted.]

[fol. 122] AFFIDAVIT OF M. O. THOMAS

STATE OF ALABAMA,
Jackson County:

Before me, Lois Stewart, a Notary Public in and for said County and State, personally appeared M. C. Thomas, who being by me first duly sworn, deposes and says:

I have served as Sheriff of Jackson County for two terms, the last term expiring on January 19, 1931; I was succeeded as Sheriff by M. L. Wann, the present sheriff of Jackson County. I was present at the jail when the nine negro boys were brought there by Charlie Latham, Deputy Sheriff, and citizens of Pain Rock, Alabama. I helped

search the prisoners and locked them in their cells. At the time they were brought to the jail, the Sheriff was out of town and did not return until late that afternoon. I remained at the jail until after the Sheriff returned and was there helping to guard the prisoners until the troops arrived and relieved me.

I have read the affidavit of the Sheriff, M. L. Wann, and can positively state that it is true and correct so far as I have any knowledge or belief. During the time I was at the jail, prior to the arrival of the troops, I can personally state that no one interviewed the prisoners or interfered or intimidated them in any way whatever.

The statement in the affidavit of Clarence Norris that he was beaten by the officers is positively untrue as no one molested them in any way prior to the arrival of the troops. After the arrival of the Sheriff, we decided to remove them to Huntsville for safe keeping and for that purpose only removed them from their cells, handcuffed them together and placed them in the hallway of the jail, seeking an opportunity to remove them.

During that time no one interfered with them or molested them or threatened or intimidated them in any possible way, and as soon as we determined that it was not safe to remove the prisoners, they were immediately placed in their cells and the doors locked. During the time I was at the jail and while attending the trials, I saw nothing out of any person or officer which could have possibly been taken as a threat or effort at intimidation.

M. C. Thomas.

Sworn to and subscribed before me this 13th day of June, 1931. Lois Stewart, Notary Public.

[File endorsement omitted.]

[fol. 123] AFFIDAVIT OF CHARLES F. SIMMONS

THE STATE OF ALABAMA,
Jackson County:

Before me, Lois Stewart, a Notary Public, in and for said County and State, personally appeared Charles F. Simmons, who, first being duly sworn, deposes and says:

That he is now and was at the time of the arrest and incarceration of the nine negro boys, including Clarence Norris, in the County jail at Scottsboro, Alabama, Chief Deputy Sheriff under Sheriff M. L. Wann, and was present at the jail when the negroes were brought there for incarceration and was present at the jail during the entire time the negroes were kept there until they were turned over to the Alabama National Guard.

I have carefully read the affidavit of Sheriff M. L. Wann and also the affidavit of Ex-Sheriff M. C. Thomas, and the same are absolutely correct and state the facts of the case and especially with reference to Clarence Norris. There was absolutely no disorder on the part of any one at the jail from the time the prisoners arrived until they were carried away by the National Guard and no officer, nor set of officers, nor any other men had charge of said prisoners or any one of them, to the exclusion of the others, except the officers and the special deputies appointed to assist in keeping order at the jail and guarding the prisoners. I was one of the officers and acted in that capacity and was in the jail guarding the prisoners during the entire time, and absolutely know that there was nothing done as charged in the affidavit of said Clarence Norris, which I have this day read. Clarence Norris wqs not mistreated by any person during his entire stay at the jail and no threats were made against him in any way, nor against any of the other eight negro prisoners. During the other stay of the prisoners at the jail after they were brought back from Gadsden, they were under the constant care of the National Guard and soldiers were stationed around the cell both night and day during their entire stay. I assisted the National Guard in opening the cell doors and also in putting the meals of the prisoners in their cells at meal time and at no time were they ever mistreated in any way or asked to testify about the matter by anyone in my presence.

I was the custodian of the keys to the cell in which the prisoners were placed and they were locked up in said cell under three different locks. I had the only keys to said locks and they were in my possession at the time of the arrival of the prisoners and I kept said keys until next [fol. 124] morning after they were locked up in the cells,

when I turned the same over to M. L. Wann, the Sheriff of said County, and I know, personally that Clarence Norris was never taken out of said cell away from the other prisoners nor was he threatened in any way while in said cell by anyone.

Charles F. Simmons.

Sworn to and subscribed before me this 13th day of June, 1931.

Lois Stewart, Notary Public.

[File endorsement omitted.]

AFFIDAVIT OF HOUSTON DICUS, W. H. THOMASON, AND H. L. PARSONS

THE STATE OF ALABAMA,
Jackson County:

Before me, Lois Stewart, a Notary Public in and for said County and State, personally appeared Huston Dicus, W. H. Thomason and H. L. Parsons, each being duly sworn, deposes and says:

That he was specially deputized as deputy sheriff at the time the nine negro prisoners charged with rape, were placed in the County jail at Scottsboro, Alabama, to preserve order and protect the prisoners from annoyonce and harm of any kind; that they were present from the time the prisoners were placed in jail in Scottsboro until the arrival of the National Guard that night about eleven or twelve o'clock; that they have each read the affidavits of M. L. Wann, Sheriff of said county, M. C. Thomas, ex-sheriff of said county and a deputy on the occasion, and also Charles F. Simmons, Chief Deputy to the Sheriff, and that each of said affidavits speak the truth to their personal knowledge; that they were present during the time mentioned in said affidavits and know the facts as stated in said affidavits to be true; that the said Huston Dicus further avers and testifies that he is and was at the time City Marshal for the town of Scottsboro and assisted Parsons and Thomason in preserving quiet during the time from the incarceration of the prisoners in the jail until the

arrival of the National Guard and that everything was orderly and quiet and was no demonstration of violence on the part of any one, and said prisoners were never separated from the time they were incarcerated until they were [fol. 125] turned over to the National Guard of Alabama, neither were said prisoners mistreated in any way, but upon the other hand, they received the same treatment as other prisoners and also the same consideration; that each of us know it to be utterly untrue and without any foundation of fact the affidavit filed in this cause by one of the defendants, to-wit, Clarence Norris.

W. H. Thomason, Houston Dicus, H. L. Parsons.

Sworn to and subscribed before me this the 16 day of June, 1931. Lois Stewart, Notary Puplic.

[File endorsement omitted.]

The final hearing and disposition of said motion for new trial, as last amended, was continued by the court until June 22, 1931, at which time defendants separately and severally offered in evidence, in addition to the foregoing oral evidence, in support of their said motion, the following separate and several affidavits:

Joint affidavit of Haywood Patterson, Clarence Norris, Charley Weems, Ozie Powell, Willie Robertson, Andy Wright, Olen Montgomery and Eugene Williams; affidavits of Roberta Fearn, Bertha Lowe, Willie Crutcher, Allen Crutcher; joint affidavit of Henry Cokley, Susie Cokley and Georgia Haley, and affidavit of Percy Ricks and Clarence Norris. Said affidavits were admitted in evidence, and are heretofore set out in this bill of exceptions.

The State offered in evidence, in addition to the foregoing oral evidence offered in its behalf, in rebuttal of oral evidence and affidavits offered by defendants, the following separate and several affidavits:

Joint affidavit of T. B. Reynolds, W. M. Wellman, and J. V. Pollarde; affidavit of Huston Dicus, W. H. Thomason and H. C. Parsons. Said affidavits were admitted in evidence, and are heretofore set out in this bill of exceptions.

The foregoing is all the evidence offered on the hearing of

said motion to set aside the verdict and judgment founded thereon and to grant defendants a new trial.
[fol. 126] On said June 22, 1931, after hearing and considering said motion, the court overruled the same, and refused to set aside the verdict of the jury and the judgment founded thereon and to grant the defendants a new trial, and to this action of the court defendants then and there, separately and severally reserved an exception.

The foregoing was presented to me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, by the defendants in said cause, as a bill of exceptions of the trial and proceedings in said cause, on this the 17th day of September, 1931.

A. E. Hawkins, Judge.

ORDER SETTLING BILL OF EXCEPTIONS

The foregoing having been presented to me by the defendant in this cause, separately and severally, on the 17th day of September, 1931 within the time prescribed by law, as a true and correct bill of exceptions on the trial and proceedings in said cause, the same is accordingly signed and allowed of record as such by me, the Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, the Judge presiding upon the trial of said cause, on this the 10th day of November, 1931.

A. E. Hawkins, Judge.

Filed November 30, 1931.

C. A. Wann, Clerk Circuit Court.

IN CIRCUIT COURT OF JACKSON COUNTY

CERTIFICATE OF APPEAL

I, C. A. Wann, Clerk of the Circuit Court in and for said County and State, hereby certify that the foregoing pages from 1 to 124, inclusive, contain a full, true, correct and

complete transcript of the record and proceedings of the said Circuit Court in a certain cause therein pending wherein the State of Alabama was plaintiff, and Charlie Weems and Clarence Norris were defendants.

I further certify that the said defendants did obtain an appeal to the Court of Appeals of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama, all of which I hereby certify to the said Court of Appeals of Alabama.

Witness my hand and seal of office this the 19th day of December, 1931.

(Signed) C. A. Wann, Clerk Circuit Court.

[fols. 127 & 128] In Supreme Court of Alabama

Present: Chief Justice Anderson and Associate Justices Garner, Bouldin and Foster.

8th Div., 321

Charlie Weems & Clarence Norris

vs.

State of Alabama

Jackson Circuit Court

Order for Writ of Certiorari—Jan. 14, 1932

It is ordered that a Writ of Certiorari issue to the Clerk of the Circuit Court of Jackson County, Alabama, commanding him to make and certify to this Court by Thursday of the next call of the 8th Division, January 21st, 1932, a true and correct copy of (1) the arraignment of the defendants (2) the drawing of the venire both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants in the cause of Charlie Weems and Clarence Norris vs. State of Alabama, pending in said Court.

[fol. 129] IN SUPREME COURT OF ALABAMA

WRIT OF CERTIORARI—Filed Jan. 16, 1931

THE STATE OF ALABAMA,
Judicial Department:

THE SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-1932

To the Clerk of the Circuit Court of Jackson County, Greeting:

Whereas in a case now pending in our Supreme Court, by appeal from a judgment of said Circuit Court, between Charlie Weems and Clarence Norris, Appellants, and State of Alabama, Appellee, the said appellee has to the Supreme Court suggested, that the transcript of the record of said Circuit Court, filed in said Supreme Court on December 29th, 1931, is incomplete in this:—the same fails to set forth a full and complete copy of (1) the arraignment of the defendants (2) the drawing of the venire, both regular and special (3) the order of the Court directing that a copy of the venire and a copy of the indictment be served on the defendants.

We therefore command you to make dilligent search of the records and proceedings in your office in the above cause, and certify, together with this writ, a full and complete transcript of said above named records and proceedings to our Said Supreme Court, by Thursday, January 21, 1932, at Montgomery.

Witness Robert F. Ligon, Clerk of the Supreme Court of Alabama, at the Capitol, this the 14th day of January, 1932.

Robert F. Ligon, Clerk of the Supreme Court of Alabama.

[File endorsement omitted.]

[fol. 130] IN SUPREME COURT OF ALABAMA

RETURN TO WRIT OF CERTIORARI

Order Fixing Date for Special Session Grand Jury, Spring, 1931

STATE OF ALABAMA,
Jackson County:

It appearing to the Court that the Grand Jury organized for this session of the Court was recessed and adjourned on the 13th day of March, 1931, subject to be recalled at any time by the Court; and, it further appears that since the said adjournment of the said Grand Jury a necessity has arisen for the reconvening of said Grand Jury.

It is, therefore, ordered that the said Grand Jury of Jackson County, which is now at recess, and which was organized for this (Spring) session of this Court to be reconvened at the courthouse in Scottsboro on Monday the 30th day of March, 1931 to consider such matters as may be submitted to it by the Court, or that deserves their consideration.

The Clerk will issue an order to the Sheriff of this County to notify the members of said Grand Jury of this order and summons them to appear on said 30th day of March, 1931 at 10 o'clock A. M.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Circuit.

Clerk's Order to Sheriff to Summons Grand Jury, at Recess

STATE OF ALABAMA,
Jackson County:

To the Sheriff of Jackson County, Alabama, Greeting:

A- order issued by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama to the Clerk of the Circuit Court of Jackson County, Alabama, that the Grand Jury of the Spring Term, 1931, that recessed on March 13th, 1931, subject to re-call and it appearing to the Court that since adjournment or recess a necessity has arisen for the reconvening of said Grand Jury, and upon said order, you are hereby commanded to notify or summon said Grand Jury to appear at the Courthouse at Scottsboro, Alabama,

on Monday the 30th day of March, 1931 at 10 o'clock A. M., to consider such matters as may be submitted to it by the Court, or anything that deserves their consideration.

[fol. 131] The above order being made by Hon. A. E. Hawkins, Judge of the Ninth Judicial Circuit of Alabama, March 26th, 1931.

The following names are the Grand Jury for the Spring Term, 1931, recessed on March 13th, 1931, subject to re-call:

Chas. Morgan, Jas H. Rogers, J. H. Cox, G. W. Minton, Geo. B. Phillips, Wm. Rash, J. P. Brown, Arthur Gamble, C. A. Mason, Noah Manning, J. M. Tidwell, A. E. Chambliss, John G. Hicks, Robt. E. Hall, Raymond Hodges, C. D. Paul, J. N. Ragsdale and Walter Berry.

And have you then and there your returns how you have executed this writ.

Witness my hand, this the 26th day of March, 1931.

C. A. Wann, Clerk Circuit Court.

I have executed the within by summoning all the within named Grand Jurymen this March 30th, 1931.

M. L. Wann, Sheriff.

Order Fixing Date for Special Session of Circuit Court

STATE OF ALABAMA,
Jackson County:

In the opinion of A. E. Hawkins, Judge of the Ninth Judicial Circuit, that it is proper and necessary that a Special Session of the Circuit Court of Jackson County, Alabama, should be held in said County, beginning on Monday, April 6th, 1931, and to continue as long as necessary to dispose of cases set for trial at said Special Session.

It is therefore hereby ordered that a Special Session of the Circuit Court of Jackson County, Alabama, be held at the Courthouse at Scottsboro, beginning on Monday 6th day of April, 1931, and to continue as long as necessary to dispose of the cases that will be set for trial at said Special Session.

It is further ordered that seventy-five regular jurors be this day drawn for said Special Session of said Court and that the Sheriff of Jackson County is hereby ordered to summon all of said seventy-five regular jurors to appear at said Special Session of this Court on Monday the 6th day of April, 1931.

It is further ordered that all judgments by default or judgments in non-jury cases may be entered during said Special Session and that pleas of guilty may be taken in [fol. 132] criminal cases and Equity cases may also be submitted for orders and decrees at said Special Session.

This the 26th day of March, 1931.

A. E. Hawkins, Judge 9th Judicial Circuit.

SPRING TERM, SPECIAL SESSION, MARCH 31ST, 1931

No-. 2402 & 2404

THE STATE OF ALABAMA

vs.

HAYWOOD PATTERSON et als.

Arraignment and Order for Trials

The Defendants being in open Court in person and represented by counsel, and being arraigned plead not guilty.

This case is set for trial on Monday April 6th, 1931, being Monday of the first week of said Special Session of the Spring Term, 1931.

It is ordered that the venire from which to select the jury to try this case consist of 100 jurors, and it appearing to the Court that 75 Regular Jurors having been regularly drawn for said Special Session of this Court, it is ordered that 25 Special Jurors be now drawn, and the jury box of Jackson County, being brought into Court and being well shaken, the Court in the presence of the defendants and their counsel, publicly drew therefrom the names of said 25 Special Jurors ordered.

The Clerk will immediately make a list of all jurors, both regular and Special, drawn for the trial of this case and issue an order to the Sheriff of this County to summon all of said jurors, both regular and special, to appear in Court on the day this case is set for trial to serve as jurors.

The Sheriff of this County will forthwith serve on the defendants a copy of the list of all jurors so drawn, both regular and special, the said list showing which are regular

and which are special jurors, together with a copy of the indictment against the defendants.

A. E. Hawkins, Judge.

I have executed the within by handing a copy of the original indictment, a copy of the Regular Venire and a copy of the Special Venire to each of the within named defendants, to-wit: Haywood Patterson, Eugene Williams, Charlie Weems, Roy Wright, Ozie Powell, Willie Roberson, Andy Wright, Olen Montgomery and Clarence Norris.

This the 4 day of April, 1931.

T. F. Griffin, Sheriff Etowah County.

[fol. 133] Certificate to Certiorari & Appeal of Charlie Weems and Clarence Norris

State of Alabama,
Jackson County:

I, C. A. Wann, Clerk Circuit Court in and for said County and State hereby certify that foregoing pages from 1 to 5 inclusive, contain a full, true and complete record and proceedings in the case of The State of Alabama vs. Charlie Weems and Clarence Norris demanded by Certiorari by the Clerk of the Supreme Court on the 14th day of January, 1932, and the same belongs to the transcript in the above cause filed with the Clerk of the Supreme Court on December 29th, 1931; to all of which I hereby certify to the said Court of Appeals as being inadvertently left out of said transcript in the case wherein the State of Alabama was plaintiff and Clarence Norris and Charlie Weems were defendant and the same being appealed to the Supreme Court of Alabama.

Witness my hand and seal of office this the 18th day of January, 1932, at the Courthouse in Scottsboro, Alabama.

(Signed) C. A. Wann, Clerk Circuit Court. (Seal.)

[fol. 134] IN SUPREME COURT OF ALABAMA

The court met pursuant to adjournment.

Present: All the Justices.

8th Div., 321

CHARLIE WEEMS & CLARENCE NORRIS

vs.

STATE OF ALABAMA

Jackson Circuit Court

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—Jan. 21, 1932

Come the parties by attorneys, and argue and submit this cause for decision.

[fol. 135] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

JUDGMENT—March 24, 1932

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court, there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. The time fixed by the judgment and sentence of the Circuit Court for the execution of the prisoners, Charlie

Weems alias Charles Weems, and Clarence Norris, alias Clarence Morris, having expired pending this appeal, it is ordered that the Sheriff of Jackson County, Alabama, deliver the defendants, Charlie Weems, alias Charles Weems, and Clarence Norris, alias Clarence Morris, to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 13th day of May 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death, to pass through the bodies of said Charlie Weems alias Charles Weems, and Clarence Norris, alias Clarence Morris, until they are dead, and in so doing he will follow the rules prescribed by the Statutes.

It is also considered that the Appellants Charlie Weems alias Charles Weems and Clarence Norris, alias Clarence Morrie, pay the costs of appeal of this Court and of the Circuit Court.

[fol. 136] In Supreme Court of Alabama, October Term, 1931-32

8 Div., 321

Charlie Weems, Alias, &c., Clarence Norris, Alias, &c.,

v.

State of Alabama

Appeal from Jackson Circuit Court

Opinion

Thomas, J.:

The record in this case, number 2402 in the circuit court, shows that on the 31st day of March, 1931, the defendants, appellants here, appeared in person and by their counsel, and were duly arraigned, and entered a plea of not guilty; that the case was thereupon set for trial along with case No. 2404, State of Alabama v. Haywood Patterson, who was also jointly indicted with the appellants in this case; was set to be tried on Monday, April 6th; that the court [fol. 137] ordered that the venire for the trial should con-

sist of one hundred jurors, including the regular jurors drawn for the week in which this case was set for trial, and twenty-five jurors specially drawn from the jury box in open court in the presence of the defendants and their counsel; that all of said jurors be summoned by the sheriff, and a list thereof be made and, together with a copy of the indictment, be served on each of the defendants. The record further shows that this order was complied with, and that such list, together with a copy of the indictment, was served on each of the defendants. This was in strict compliance with the statutes.—Code 1923, §§ 8644, 8649. See Patterson v. State and Powell, et als. v. State, MS, as to venire and setting of the causes for trial.—Whitehead v. State, 206 Ala. 288.

The motion for change of venue made in this case, and the evidence in support thereof, are identical with the motion and evidence made in the case of State v. Haywood Patterson, No. 2404, which has been fully considered in Patterson's appeal, argued and submitted along with this appeal, and what was said in that case will not be repeated here, as we are in accord with Justice Brown's and Knight's opinions of the facts on this motion and under the authorities cited and adverted to in the opinions in Patterson v. State and Powell et als. v. State, supra. The motion was denied without error.—Patterson v. State, MS; Malloy v. State, 209 Ala. 219, 96 So. 57; Riley v. State, Ib. 505, 96 So. 599; Godau v. State, 179 Ala. 27, 60 So. 908.

The indictment was in the form prescribed by the statute, and under the repeated decisions of this court was sufficient to advise the appellants of the nature and cause of the accusation, and appellants had a copy thereof. This met the requirements of the Constitution.—Malloy v. State, supra; Schwartz v. The State, 37 Ala. 460; Doss v. State, 220 Ala. 30, 32; Jinright v. State, Ib. 268; Myers et al. v. The State, 84 Ala. 11; McQuirk v. State, Ib. 435, 5 Am. St. Rep. 381. The many authorities on this point are col-
[fol. 138] lected in 62 A. L. R. 1392, note.

The evidence of the State's witness, Victoria Price, to state its substance, goes to show, that on the 25th day of March, 1931, while she was riding on a freight train through Jackson County, with her girl companion, Ruby Bates, that they were riding in a "gondola car" loaded

with chert or gravel; that just after the train passed Stevenson in Jackson County, Alabama, the appellants, Charlie Weems and Clarence Morris, with the aid of other negroes, forcibly stripped off her outer garment, a pair of overalls, tore off her undergarments, and forcibly ravished her; that there were twelve in the party of negroes who came upon the car and forced six of seven white boys to leave the train while it was in fast motion, by assaulting said white boys; that after said white boys were forced to leave the train, some of the negroes raped her companion, Ruby Bates, and the other raped her—six in number—and that some of them held the girls while the others accomplished their purpose; that Weems held a knife against the throat of witness, while some of the others, including Norris, forcibly had sexual intercourse with her.

On cross-examination, after this witness testified that she was married, and had not been divorced, she was asked by defendants' counsel: "Did you leave him (her husband) at Huntsville?" The court sustained the solicitor's objection to the question, and defendants excepted. This question called for immaterial testimony, and the objection was properly sustained. She was also asked by defendants' counsel: "How long had you known your husband before you married him?", and due objection was sustained. This likewise called for immaterial testimony, and the objection was properly sustained. The same is true as to the question, "Were you ever in jail before?"

[fol. 139] Dr. Bridges, whose qualification as a medical witness was conceded by the defendants' counsel, testified that he, with Dr. Lynch, the county health officer, made a physical examination of the witnesses Victoria Price and Ruby Bates on the afternoon of the alleged rape, and found bruises and scratches on their persons, but no lacerations or tears of the sexual organs, and testified to the presence in the vaginas of the two witnesses of the male germ, going to show penetration; and expressed his judgment as a physician, that "six men, one right after the other, could have had intercourse with her (Victoria Price) without lacerations. That is possible." This opinion evidence was competent.

On cross-examination of this witness, the defendants' counsel asked him: "Both of these girls admitted to you they had had sexual intercourse previous to this, didn't

they?" Due objection was made to this question which was sustained. There was no evidence showing or tending to show that the defendants had sexual intercourse by and with the consent of the State's witnesses. The evidence sought was not material. Patterson v. State; Powell, et als. v. State, MS.; Griffin v. The State, 155 Ala. 88, 46 So. 481; Rice v. State of Florida, 35 Fla. 236, 17 So. 286; Story v. State, 178 Ala. 98. See, also, Bailey v. Com., 3 A. S. R. 87; 22 R. C. L. p. 1208, § 42; 52 C. J. 1079, § 109.

The same is true as to the following questions to this witness: "Both of them told you they had had sexual intercourse, one told you she had been married and the other told you she had been—." * * * "From your examination could you tell whether or not they were subject to intercourse? Were they virgins?" * * * "That you find anything in the vagina that indicated to you these girls had had or might have had gonorrhea or syphilis?" And other questions of like import. The latter question was not pertinent as to identity or the corpus delicti of the immediate offense, as was the case in Williams v. State, 139 So. 291. These inquires were beyond the controverted issues of fact being tried.

[fol. 140] Tom Taylor Rousseau testified as a witness for the State, identified the appellants as being among those taken from the train at Paint Rock—from the gondola car—also testified that he did not see the girls when they got off the train, and further testified: "I saw Victoria Price a little later. When I saw her at that time they were coming around the depot with her in a chair. She had her eyes closed and was lying over this way and they were bringing her from the depot up to town to the doctor's office. That was Victoria Price. I saw her later one time from where I was. She was still in the chair." This witness testified on cross-examination, among other things, that "One of the girls was not in condition to walk. I did not help carry her off. There was an officer toted (carried) the girl up there. They toted (carried) her off the train, a fellow named M. A. Mize. He had to carry her away from the train, unconscious. I don't know about what the doctor said about her being unconscious at that time. I was not there. I was there at the time the girl was taken off."

At this junction, defendants' counsel asked the witness: "And if he (the doctor) testified immediately after their

arrival here or at Paint Rock she was not unconscious, he is mistaken about it?" The objection to this question was properly sustained. It was the province of the jury, not the witness, to say which of the two versions was true. Moreover, the question related, not only to the condition of Mrs. Price at Paint Rock, but also at Scottsboro, and this witness had not testified to her condition at Scottsboro.

[fol. 141] Jim Broadway testified as a witness for the State, that he was present at Paint Rock when Victoria Price and her companion left the train, and further, "I saw Victoria Price there. We got her off the freight train. She was on one of these gravel cars. That is known as a gondola car. There was another woman with her, the Bates girl. The Bates girl, seemed to be in fairly good shape, but the other could (not) hardly talk and couldn't walk."

The State's solicitor here asked the witness: "Did you hear them make any complaint there, either one of these girls, of the treatment they had received at the hands of these negroes?" The defendants severally objected to this question on the ground that it called for incompetent, irrelevant, immaterial and illegal testimony, and for hearsay testimony. The court ruled that the answer be limited to Victoria Price, the person named in the indictment as the victim, and the defendants again objected on the same ground. The objection being overruled, the witness answered: "I did not hear Victoria Price make any complaint, either to me or anybody else there, about the treatment she had received at the hands of these defendants over there. We sent and got a chair for Victoria Price and carried her to the doctor's office at Paint Rock."

The courts are unanimous in holding on a trial for rape and assault with intent to ravish, that it is permissible to show that the alleged victim made complaint of the outrage soon after its commission, as a circumstance to corroborate her testimony.—Barnes v. State, 88 Ala. 204, 7 So. 38; 16 A. S. R. 48, and note; 22 R. C. L. 1212, § 47. The defendants' objection was, therefore, overruled without error.

[fol. 142] Ruby Bates, the companion of Victoria Price, over defendants' objection, was allowed by the court to testify that the defendants were among those on the train; that they, with the others, came over the box car in a body and into the gondola car where the witness and her woman companion were riding, armed with pistols and knives, and as-

saulted the white boys and forced them to leave the train, and then seized the witness and her companion and threw them down in the car.

On cross-examination this witness testified: "I have never been married. I had a conversation with the doctor about having sexual intercourse. I am talking about the doctor after I arrived at Scottsboro, I do not remember his name. * * * I just told him to examine me and see if he could find anything wrong with me. I told him about those negroes." Counsel for the defendants thereupon asked the witness: "No, not about the negroes, but did you tell him you had intercourse before?" The court sustained the solicitor's objecton to this question, and for reasons heretofore stated, this ruling was not error.

This witness further testified on cross-examination:

"I had not said a word to these white boys when I saw the negroes coming over. Nothing had been said between either me or my companion to the white boys. They were in one end of the car and we were in the other, sitting perfectly quiet, no sort of conversation, just sat there looking at each other. When I saw the negroes coming one of these white boys looked up over the car and said: 'Look coming yonder,' and we all looked up then, and they told the white boys to [fol. 143] unload and the white boys still hadn't said nothing to us. There was one white boy out of seven left on the train. I do not (know) the names of any of the white boys. I could not tell you why they left this one. He stayed on in that gondola car. The negroes hit him but they did not put him off." Defendants' counsel then asked the witness: "They could have put him off just like they did the rest of them; there wasn't any reason for not putting him off, was there?"

This question called for a conclusion, and if it was at all material, the jury, under the facts developed, could draw the conclusion or inference.

The further testimony of this witness fully corroborated the witness Victoria Price, going to show that these girls were forcibly ravished.

Luther Morris, who was, at the time the train passed, between Scottsboro and Stevenson, at his home, testified in behalf of the State, that he observed the freight train passing. "I saw a bunch of negroes put off five white men

and take charge of two girls. I saw between eight and ten negroes, and they put five white men off the train, made them get off the train. They did not throw them off; they just overpowered them and made them get off. * * * I did not hear any pistol shots. The train was making so much racket I could not hear. I figure that the train was making between thirty-five and forty miles an hour. I saw those white men get off or fall off the train. I guess I observed that and could see that train there for about four hundred yards. I was there in thirty yards of the [fol. 144] track. The kind of car on the train they were getting off was a coal car, or gravel car, you might call it."

On cross-examination this witness testified:

"I saw two women in the gondola, two white girls. The two white girls were doing their best to jump, and the negroes caught these two white girls and they were pulled back down in the car. I was standing above this train so I could get a good view. I saw all of this going on. * * * I went out to where these boys were, the two that got knocked in the head, but they were hurting so bad they could not talk. They just said: 'I am dying.' I certainly did notice wounds or bruises about them."

The State offered two more witnesses, who observed the train as it passed and saw some of the crowd on the train, and afterwards saw the white boys after they were forced off the train.

The defendant Weems testified, inter alia:

"My name is Charley Weems. I was on this freight train running between Stevenson and Paint Rock on March 25th. There were twelve of us negro boys on that train. There were seven white boys on there. I first seen the white boys when we left Chattanooga. I did not see the girls on the train till we got to Paint Rock. I got on the side of a box car at Chattanooga and crawled over to an oil tank. When the train slowed up at Main Street I came across the box car to the oil tank. When we got up to that next little town above Chattanooga, I left the oil tank and went to the gon- [fol. 145] dola I don't know what town it was. I had been out of Chattanooga about an hour or a little over. The fight between the white boys and the negroes started down

here at Stevenson, after we left Stevenson. The white boys were in the gondola. The negroes got in the gondola directly after we left Stevenson. Haywood Patterson and that long yellow boy back there first went in the gondola. Three of us went over in the gondola. What prompted me to go in the gondola, Haywood Patterson had a pistol and he said 'Come on and help me get the white boys off; if you don't I am going to shoot you off.' I don't know whether any of the negroes had been quarreling. They were not on the train where I was. I was one of the three boys that went in the gondola first. I was behind Haywood Patterson. Haywood Patterson just walked up and hit this white fellow over the head with a pistol. I was not doing anything at all. I didn't have a pocket knife or nothing. I just told the white boys to get off. A fight did not start. These white boys did not fight at all; they just run and tried to get off the train. About five got off the train. I could not tell how many stayed on the train. Some of them went off toward the engine. I don't know where the girls were. I did not see the girls. I never did see the girls. I got off the train when we got to Paint Rock. I got off the train. Five boys got off the train in all. The five were me and Clarence Norris, Ozie Powell, Willie Roberson and that boy back there, Olen Montgomery, that blind boy. I had known these negroes that were with me since we left Atlanta; we left Atlanta together. I did not know the rest until we got on the road. The first time I saw these girls was when we got to Paint Rock. They [fol. 146] were getting off the train. They got off the gondola. I wasn't in the gondola they were on. I wasn't in that gondola at all. I had not been in that particular car, not where they were. I did not see the girls until they were getting off the gondola. I don't know how many gondolas were on that train; five or six on that train along in line together; some were, and some on the other side of box cars; a box car was between them. I had nothing to do with the girls at all. If anybody had anything to do with the girls I don't know nothing about it. * * * I wasn't on a gondola. I was on an oil tank. I got over in the gondola down at Stevenson. I walked over the top of the gondola. Some white fellows were in the gondola. There was gravel in that gondola. These white boys were in the car when I got in it

at Stevenson. I did not jump off the box car into the gondola. I climbed down and stepped in. The car had steps on the end of it. Haywood Patterson told me to go in there and help throw them white fellows off; if I didn't he was going to shoot me off. That is Patterson (indicating). He told me why he wanted me to go along. He wanted to go in there and help throw the white fellows off. He said he was throwing them off because they had been trying to run over him down in the oil tank. Haywood Patterson had a pistol. I did not have a pistol. I saw his pistol. He went back along the train to call me to help throw the boys off. There were seven white boys on the train. We had come to Stevenson from Chattanooga before we got in there. I could not see all over the gondola and there could not have been anybody hid in there where I could not have seen them. I did not see those two girls in there. The boys were lying right [fol. 147] in the center of the gondola car. I did not see the girls at no time until I got to Paint Rock. Five boys were put off. Haywood Patterson hit one; I don't know his name, but he had on a big wide belt, and he hit him across the head with a pistol. When he hit him he did not catch hold of him. He didn't grab him. This white fellow just jumped off and said 'Yes, we will get off.' He did not fight, because the white fellow got scared of the pistol and climbed down on the side of the car and jumped off. The other fellow jumped off. They all jumped off but one. One little white boy stayed in the car and Patterson said to put him off and he done put his foot down on the side and another boy had a big knife around his throat. He did not jump off. He begged for mercy and I reached down and pulled him back on the box car. I never saw these girls at all and never had anything to do with them; never had my hands on them. I could tell the girls from the boys. Just because they had on overalls it wouldn't change their looks with me. There wasn't a soul in that car with me and Patterson except these negroes and one white boy. * * * We were all in the gondola when we got to Paint Rock. I never saw no girls in this gondola we were in at all. I first saw the girls when they came toting them through Paint Rock. They had the oldest girl in a chair coming through Paint Rock. She did not get out of the gondola I got out of. I don't know whether she got out of a gondola or not. The first I saw of

either one of the girls they were bringing the oldest girl up in a chair."

[fol. 148] The defendant Norris testified, among other things:

"I was not in the gondola when this fight ocurred. I seen two boys on the flat where I was on the cross-ties. I did not have any trouble with them. I did not have a pistol or a knife. I did not leave that car I was riding on. I did not leave it at Paint Rock. I don't know who took me off the train at Paint Rock, there were so many there. I remember getting off. I got off at Paint Rock, I reckon. I did not just leave the train. They threw guns on me, the officers did. I had not been engaged in the fight at all but I seen the fight. The fight took place in the gondola car. Every one of them colored boys was fighting. They were all fighting. That one yonder, Haywood Patterson started the fight. He came across the flat car where I was on the cross-ties; him and the rest of them colored boys come across that car and said he was going over there to run the white boys off and going to have something to do with them white girls. I saw this boy that just testified before me on the stand. They came across where I was sitting down at that time. They knew the girls were on the train and the white boys with the girls on the gondola car. I had not seen the girls. I hadn't seen them till I got off this flat car I was sitting in, and seen these boys fall off the train; after he said he was going to run them off I seen them fall off the train and I asked two white boys what they were getting off the train for and he told me he did not know, and I got up on the train to see if he was putting them off, and sure enough I got up on the box car and looked where they were and the whole crowd was putting the white boys off. One had a knife around the other's neck and trying to push him off, and he wouldn't get off and the other boy took him and pulled him back up in the car. I did not have anything to do with the girls. I did [fol. 149] not have my hand on any of them. I did not hold them or anything of that sort. When I first saw the girls the train was away up the road. When I saw the girls was when I got up on the box car and looked over

where he was putting the white boys off. * * * I did not get into that gondola at all. I just looked in. This Weems I was speaking about here is not my friend. I knew him. I saw him over in the gondola and I saw the girls in there, but I did not go in there. I saw that negro in there with those girls. I seen everyone of them have something to do with those girls after they put the white boys off the train. After they put the white boys off I was sitting up on the box car and I saw every one have something to do with those girls. I was sitting on top of the box car. I saw that negro just on the stand, Weems, rape one of those girls. I saw that myself. When the officers searched me they did not find anything on me. They did not find a pearl-handled knife. They did not find a pearl-handled knife on me. I did not have a knife or pistol. I did not go down in the car and I did not have my hands on the girls at all, but I saw that one rape her. They all raped her, every one of them. There wasn't any one holding the girls legs when Weems raped her, as far as I saw. The other boy sitting yonder had a knife around her throat, that one sitting on the end behind the little boy. I don't know what his name is, but he is the one that had the knife. I did not see the little one hold of her legs while this one was raping her. I did not see anybody holding her legs. I don't know who pulled off her overalls. The girls were lying down when I got up on the box car. This big one did not have a knife on her throat. That little boy sitting behind yonder—I don't know his name—is the one [fol. 150] that had a knife around her neck, making her lie down while the others raped her. I didn't see any of the negroes take her overalls off. The girls were lying down when I got up on the box car. I saw the overalls lying in the car. I did not see any step-ins. I did not get down in the gondola, never did get down in there."

The State offered evidence in rebuttal going to show that the officers, when they arrested Norris, took off his person a knife, which was identified by the witness Victoria Price as her knife, and testified that Norris took the knife from her as well as all the money she had—one dollar and fifty cents.

Appellants' insistence that the evidence does not support the verdict of guilty as charged in the indictment, cannot

be sustained. The evidence, much of which has been set out above, proves the body of the crime, without dispute, and strongly tends to establish a conspiracy between those who forced the white boys to leave the train, to do the unlawful acts which immediately followed, and that they all aided and abetted therein.—22 R. C. L. 1176, § 6; State v. Burns, 82 Conn. 213, 72 Atl. 1083, 16 Ann. Cas. 465; State ex rel. Attorney-General v. Tally, Judge, &c., 102 Ala. 25.

There is no contention on the part of the defendants, that they had sexual intercourse with the alleged victim by and with her consent, express or implied, and no evidence was adduced to support such contention; therefore, evidence alleged to have been newly discovered, was not such as would authorize the granting of a new trial.—Patterson v. State, MS.; Fries v. Acme White Lead & Color Works, 201 Ala. 613. There was no error in overruling the motion for a new trial.—Patterson v. State, supra.

[fol. 151] The record shows that the defendants were represented by counsel who thoroughly cross-examined the State's witnesses, and presented such evidence as was available in their behalf, and no reason appears why the judgment should not be affirmed.

Other questions presented on motion for a new trial were fully considered in the Patterson and Powell Cases, which are here approved, and need not be repeated. There is no reversible error. The judgment of the lower court is, therefore, affirmed as to each of the defendants, Charlie Weems, alias, &c., and Clarence Norris, alias, &c.

Affirmed.

Gardner, Bouldin, Brown, Foster and Knight, JJ., concur.

Anderson, C. J., dissents.

[fol. 152] Clerk's certificate to foregoing paper omitted in printing.

[fol. 153] [File endorsement omitted]

IN SUPREME COURT OF ALABAMA

No. 321

CLARENCE NORRIS and CHARLIE WEEMS, Appellants,

vs.

STATE OF ALABAMA, Appellee

On Appeal from the Circuit Court of Jackson County, Alabama

APPLICATION FOR REHEARING—Filed March 25, 1932

[fol. 154] [Title omitted]

Comes the appellants, Clarence Norris and Charlie Weems, and hereby makes application for a rehearing of said cause and moves the Court to set aside the judgment of affirmance rendered in said cause and to grant them a new trial, and that said cause be reversed and remanded to the Circuit Court of Jackson County, Alabama, for the causes and reasons assigned hereinafter in this application.

G. W. Chamlee, (Signed) J. R. Brodsky, (Signed) Irving Schwab, (Signed) G. W. Chamlee, Jr., Attorneys for Appellants, Clarence Norris and Charlie Weems.

[fol. 155] [Title omitted]

Now comes the appellants, Clarence Norris and Charlie Weems, in the above cause and presents this their application for a rehearing therein, and prays the Court to set aside and vacate the judgment and opinion of conditional affirmance rendered in said cause and to enter a judgment in favor of appellants or reversing and remanding said cause, and in support of their application for a rehearing presents the following assignments of error with brief and argument thereof.

I

The Court erred and misconstrued appellants' assignment of errors, as set out in their brief and in this cause,

and that their motion and petition for a change of venue with the exhibits thereto and evidence in support thereof legally entitled them to a change of venue, and the action of the Circuit Court of Jackson County was reversible error and violative if their legal rights as provided by Article 6, of the Constitution of the United States, which provides that, "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which district shall have — previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

[fol. 156]

II

The Court erred and its conditional judgment of affirmance is violative of that portion of the Constitution of the United States in Article 14, Section 1, which provides, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

III

The Court erred in not granting a new trial and reversing the judgment of the Circuit Court of Jackson County, because the appellants were denied a speedy and public trial by an impartial jury of the State and District wherein the alleged crime was alleged to have been committed, but was tried under the influence of a mob and a biased jury.

IV

The Court erred and a new trial should be granted because the indictment against the appellants merely charges that the appellants "Before the finding of the indictment forcibly ravished Victoria Price, a woman, against the peace and dignity of the State of Alabama", and said indictment was illegal and void, and the Act of the Legis-

lature of the State of Alabama, upon which said indictment was founded, was unconstitutional and void and in conflict with the Constitution of the United States, which provides, that the appellants shall "be informed of the nature and cause of the accusation" against them at the time of the trial, and their rights were denied and abridged by the judgment of the Circuit Court of Jackson County, Alabama.

V

The Court erred and its conditional judgment of affirmance should be reversed and rescinded and the judgment of the Circuit Court of Jackson County reversed, because the jury was not interrogated as to whether or not they bore any race prejudice against the appellants, and because of the presence of a mob at and about the Court house while the jury trying these appellants was hearing the testimony and considering their case, a mob was demonstrating in the [fol. 157] Court house and about the streets in Scottsboro within the sight and hearing and in the presence of the jury trying these appellants, which deprived them of a trial by an impartial jury of the State and District wherein the crime was alleged to have been committed.

VI

The Court erred in not granting a new trial because the appellants were not represented by counsel and had no opportunity to prepare their case for trial and on account of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel and denied to the appellants due process of law.

VII

The Court erred in not granting a new trial because the jury commission and the officers executing the jury law of Jackson County purposely excluded all negroes from the special grand jury which brought in the indictment against the appellants, and also excluded all negroes from the special panel or venire of jurors from which the jury was selected to try appellants, and such exclusion of negroes was based upon race discrimination and race prejudice because the appellants were negroes and the prosecuting wit-

ness a white woman and this constituted a denial of that provision of the United States Constitution, Article 14, Section 1, which provides, "equal protection of the law to all persons."

VIII

The Court erred and the judgment of the Circuit Court of Jackson County should be reversed, because there was present at the Court a mob threatening and menacing the appellants, embarrassed and coerced the members of the trial jury, intimidated and prejudiced the minds of said jury by a demonstration before the trial began, and a demonstration after the trial began and during the time that Court was in session, and because of the presence of the mob spirit and hysteria dominating the trial, terrorized the Judge, jury and counsel, the appellants were denied due process of law, and the judgment against them was void.

[fol. 158]

IX

A new trial should be granted and the judgment of the Court below reversed, because the indictment was void and because Section — of the Code of Alabama, 1907, and Form 84 of Code Section 5407 is unconstitutional because in conflict with and repugnant to the Constitution of the United States, Article 14, Section 1.

X

The Court erred and a new trial should be granted because the Supreme Court of the State of Alabama follows in this cause a ruling laid down in said Court in the case of Malloy v. State, 209 Ala. 219, which said ruling is repugnant to and in controvention of the Constitution of the United States, as above cited, which provides that "No persons shall be put to answer any criminal charge except by indictment, etc. and that the indictment should inform him of the charge against him, and the ruling of the Supreme Court of Alabama in Malloy v. State, 209 Ala. 219, should be overruled because repugnant to the Constitution of the United States, and because it deprives these appellants of

their legal and constitutional rights to be informed legally of the charge against them.

(Signed) G. W. Chamlee, J. R. Brodsky, Irving Schwab, Joseph Tauber, Attorneys for Appellants.

I hereby certify that I served a copy of this petition to rehear with the brief attached hereunto upon the Honorable Thomas E. Knight, Jr., Attorney-General for the State of Alabama, on this the 25 day of March, 1932.

G. W. Chamlee, Attorney for Appellants.

[fol. 159] Brief and Citations of the Law in Support of the Above and Foregoing Assignments on the Petition to Rehear in This Cause

Point I

The venue should have been changed, as set out in assignmenr No. I of this petition to rehear, because the opibion of conditional affirmance of this Court is in direct conflict with the opinion and decision handed down in the case of Downer v. Dunnaway, United States Circuit Court of Appeals, 5th Circuit, in cause No. 6286 at New Orleans, Louisiana. Also it is in conflict with the decision of the case of Moore vs. Dempsey, 261 U. S. 86, and also because it is in conflict with the case of Thompson vs. State, 117 Ala. 67, and other cases cited in our original brief in the case of Ozie Powell, et al, vs. State of Alabama filed on the original hearing of this cause.

Point II

The Court erred in its conditional judgment of affirmance, because throughout this record there is disclosed a total disregard of the legal rights of these appellants to a fair and an impartial trial, and to fue process of law, as provided for in the Constitution of the United States.

Downer vs. Dunnaway, U. S. Circuit Court of Appeals, 5th Circuit, in case No. 6289.

Moore v. Dempsey, 261 I. S. 86.

Point III

The Court erred in its conditional judgment of affirmance, because all negroes of Jackson County had been excluded from the jury box and no negroes were summoned for the grand jury that indicted the appellants, or on the trial jury which tried them.

Neal v. Delaware, 105 U. S. 370, 397;
Rogers v. Alabama, 192 U. S. 226;
Carter v. Texas, 177 U. S. 442;
Strander v. W. Va., 100 U. S. 303;
Gibson v. Miss., 162 U. S. 565;
Bush v. Kentucky, 106 U. S. —;
Ex. P. Virginia, 100 U. S. 313;
Green v. State, 73 Ala. 26;
Roberson v. State, 65 Fla. 97;
State v. Peoples, 131 N. C. 784;
Boneparte v. State, 65 Fla. 97;
Montgomery v. State, 55 *a*Fla. 97.

[fol. 160] prosecution for the same offense, and so clearly that the Court may be able to determine whether or not the facts there stated are sufficient to support a conviction."

Armour Packing Co. v. United States, 153 Fed. 116, citing Ledbetter v. U. S. 616, and other cases cited on page 545 of "Joyce on Indictments."

Point V

The Court erred in its conditional judgment of affirmance in this cause, because a new trial should be granted for the reason that members of the trial jury were not interrogated as to whether or not they bore racial prejudice against the appellants, and because of the presence of a mob at and about the Court House, and because of public demonstration prior to and during the trial, the appellants' rights were violated and the Constitution of the United States was violated, because under the Constitution it was provided that appellants should have a fair trial and be represented by counsel, and they did not have a fair trial because of the presence of a mob threatening and intimidating, and because of a parade and demonstration put on in and around

the Court house at and before their trial rendered the judgment illegal and void and here refers to cases cited on pages 38 to 61 of the main briefs filed with this Honorable Court in this cause, the brief being styled Ozie Powell, et al, vs. State of Alabama, but they call to the attention of the Court the following cases:

Moore v. Dempsey, 261 U. S. 86;
Frank v. Mangrum, 237 U. S. 309;
Downer v. Dunnaway, U. S. Circuit Court of Appeals, Fifth Circuit, No. 6206 (not yet reported);
Seay v. State, 207 Ala. 453, 93 So. 403;
Holladay v. State, 100 So. (Ala.) 86;
Clayton v. State, 123 So. (Ala.) 250;
Collum v. State, 107 So. (Ala.) 35;
Bradley v. State, 21 Ala. App. 539;
110 So. 157 (affd. 215 Ala. 140);
Collier v. State, 115 Ga. 803;
State v. Wilson, 42 S. E. (N. C.) 556;
Hamilton v. State, 57 S. W. (tex.) 431;
Voughan v. State, 57 Ark. 1;
Douglas v. State, 152 So. 379;
Liggon v. State, 200 S. W. (tex.) 550;
State v. Weldon, 91 S. C. 29.

[fol. 161] We are confident that this Honorable Court misconstrued our assignments of error on the hearing of this cause and that the judgment of the Circuit Court of Jackson County should be reversed and a new trial granted and the venue changed to some other county and remanded for another trial.

Respectfully submitted.

George W. Chamlee, George W. Chamlee, Jr., Joseph R. Brodsky, Irving Schwab, Allen Taub, Elias M. Schwarzbart, Joseph Tauber, Sydney Scrieber, Attorneys for Appellants.

[fol. 162] IN SUPREME COURT OF ALABAMA, OCTOBER TERM, 1931-32

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS,

vs.

THE STATE OF ALABAMA

APPEAL FROM JACKSON CIRCUIT COURT

ORDER OVERRULING PETITION FOR REHEARING—April 9, 1932

Application for rehearing having been filed in this case on March 25th, 1932, and each and every ground of the petition being duly examined and understood by the Court, it is considered and ordered that each and all grounds of the petition be and the same are hereby overruled, and the said application for rehearing be and the same is hereby overruled.

[fol. 163] IN SUPREME COURT OF ALABAMA

No. 321

CHARLIE WEEMS and CLARENCE NORRIS, Appellants,

vs.

STATE OF ALABAMA, Appellee

PETITION FOR STAY OF EXECUTION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the State of Alabama:

The petitioners, Charlie Weems and Clarence Norris, Appellants, in the above styled cause most respectfully represent that on the 24th day of March, 1932, this Honorable Court announced its affirmance of the judgment of the Circuit Court of Jackson County, Alabama, imposing the death penalty upon these petitioners and fixing May 13, 1932, as the date of their execution, and that

they filed their petition for a rehearing in this Honorable Court, which was overruled and disallowed on April 9, 1932, and they desire to obtain a stay of proceedings or a recalling of the order imposing the death sentence upon them to give them and their counsel time to comply with the legal requirements in the preparation and filing of their petition for certiorari in the Supreme Court of the United States at Washington, D. C. for the purpose of having their case reviewed by the Supreme Court of the United States under the rules and pleadings prescribed for trials in that tribunal.

Your petitioners make this application under the provisions of Section 8(d) of the Act of Congress of February 13, 1925, (U. S. Code, title 28, section 350), and in support thereof present the following:

Your petitioners feeling themselves aggrieved by the judgment of this Court and as they are advised by their attorney a petition for a writ of certiorari to the Supreme Court of the United States is to be filed, the grounds being in brief as follows:

[fol. 164] That the judgment of this Court in affirming the judgment of the Circuit Court of Jackson County has deprived, or is about to deprive, your petitioners of their lives and liberty without due process of law and has denied to your petitioners the equal protection of the laws as provided by the 14th Amendment to the Constitution of the United States in that:

(a) A change of venue was denied to your petitioners although duly applied for compelling your petitioners to face trial in the presence of a hostile and threatening mob.

(b) The indictment did not apprise the petitioners of the charge against them with the certainty required.

(c) Your petitioners were denied an opportunity to employ counsel or to be properly represented by counsel and to prepare their case for trial.

(d) Mob spirit and hysteria dominated the trial, terrorized jury and counsel, interfering with the course of justice and denying to your petitioners their right to a fair and impartial trial under the law of the land.

(e) Negroes were improperly excluded from the grand and petit jury panels, and for any other reasons appearing in the transcript of this cause.

Your petitioners are advised by counsel that under the Federal Statutes and rules of the Supreme Court of the United States the following steps must be taken before the petition for the writ of certiorari is deemed "docketed," and submitted to the Supreme Court:

I

The transcript of the proceedings before this Court must be certified by the Clerk thereof (Rules of the Supreme Court of the United States 38 Subd. 1). Your petitioners are advised by their counsel that a præcipe for the preparation and certification of this transcript is being filed with the Clerk on the day of the presentation of this petition together with copies of the record on appeal, certified [fol. 165] copies of the opinion and all other records required by the rules of the Supreme Court which the attorneys for your petitioners may have in their possession.

II

The transcript must be forwarded to the Government Printing Office for printing. Rule 38, subd. 7, requires that the record of the Court below must be printed and filed prior to the submission of the petition for the writ of certiorari.

III

The printing of these records must be completed before the petition for a writ of certiorari and the brief in support thereof can be placed in final form. This is necessary in order that the proper references to the transcript may be made in the petition and brief.

IV

The rules of the Supreme Court also require that the petition for the writ of certiorari and the brief in support thereof be likewise printed before the application is deemed docketed.

V

All of the aforementioned procedural requirements must be completed before the Supreme Court will entertain the

petition for writ of certiorari. By the rules of the Supreme Court of the United States, the Acts of Congress, these procedural steps must be complied with within ninety days from the date of the entry of the final decree or the judgment of this Court.

Your petitioners are advised by their attorneys that they will proceed with the docketing of the petition for the writ of certiorari with dispatch and will complete same without any undue delay.

Your petitioners respectfully ask this Court to take into consideration, not only the aforementioned technical delays but the additional factor—the distances between the seat [fol. 166] of this Court, the seat of the Supreme Court of the United States and the offices of the attorneys for the petitioners, and your petitioners have been advised that it will take your petitioners and their counsel almost all, if not the entire ninety days allowed by Federal statute for the preparation and verification, certification and printing of the transcript, petition for the writ of certiorari and brief in support thereof.

Your petitioners respectfully ask this Court to also take into consideration the additional time required by the Supreme Court for the consideration and decision upon the petition for the writ of certiorari.

The record in the instant case is voluminous and your petitioners respectfully submit that the Supreme Court of the United States will need time to study the records in this case as well as in the two other related cases of Ozie Powell et al. vs. State of Alabama, and Haywood Patterson vs. State of Alabama.

Even if it were practicable or possible to complete the docketing for the writ of certiorari before May 13, 1932, the decision of the Supreme Court of the United States will have to be made upon the petition before the writ of certiorari will issue.

Your petitioners respectfully submit to this Honorable Court that a stay of execution is necessary in order to give your petitioners an adequate opportunity to make application for review by certiorari by the Supreme Court of the United States. They respectfully pray that an order be made by this Honorable Court providing for a reasonable stay of execution pending the preparation and docketing

of a petition for a writ of certiorari and pending the consideration and decision of the Supreme Court of the United States thereon.

Respectfully submitted.

(Signed) Charles Weems, Petitioner, (Signed) Clarence Norris, Petitioner, by (Signed) G. W. Chamblee, Atty.

[fol. 167] *Duly sworn to by George W. Chamlee. Jurat omitted in printing.*

A copy of the foregoing petition was served on Honorable Thomas E. Knight, Jr., Attorney General for the State of Alabama, on this the 18 day of April, 1932.

(Signed) G. W. Chamlee, (Signed) Irving Schwob, Attorneys.

[fol. 168] IN SUPREME COURT OF ALABAMA

Present: All the Justices.

8 Div., 321

CHARLIE WEEMS, Alias CHARLES WEEMS, and CLARENCE NORRIS, Alias CLARENCE MORRIS,

vs.

THE STATE OF ALABAMA

Appeal from Jackson Circuit Court

ORDER STAYING EXECUTION—April 19, 1932

In this cause it is made to appear by the petition that defendants (appellants) desire to seek a review of the judgment of this Court by the Supreme Court of the United States through writ of certiorari, and that the preparation and presentation of a proper petition for certiorari under the rules of practice of the Supreme Court of the United States cannot reasonably be accomplished before May 13th, 1932, the date heretofore set for the execution of the death sentence upon defendants, it is ordered by the Court that the execution of such sentence be and is stayed until Friday June 24th, 1932, which date is now set for the execution of such death sentence in all respects as required by law.

The time fixed by the judgment and sentence of the Supreme Court for the execution of the prisoners Charlie

Weems alias Charles Weems and Clarence Norrow alias Clarence Morris having expired pending this appeal, and the date of execution of the sentence having been reset by the Supreme Court of Alabama from May 13th, 1932 to June 24th, 1932. It is therefore ordered that the Sheriff of Jackson County, Alabama, deliver the defendants Charlie Weems, alias Charles Weems, and Clarence Norris, alias Clarence Morris, to the Warden of Kilby prison, at Montgomery, Alabama, and that the said Warden of said Kilby prison at Montgomery, Alabama, execute the judgment and sentence of the law on Friday the 24th day of June, 1932, before the hour of Sunrise on said day in said prison, by causing a current of electricity of sufficient intensity to cause death to pass through the bodies of said Charlie Weems alias Charles Weems and Clarence Norris alias [fol. 169] Clarence Morris until they are dead, and in so doing he will follow the rules prescribed by the statutes.

It is also considered that the appellants pay the costs of appeal of this Court and of the Circuit Court.

[fol. 170] IN SUPREME COURT OF ALABAMA

No. 321

CHARLIE WEEMS and CLARENCE NORRIS, Appellants,

vs.

STATE OF ALABAMA, Appellee

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed April 18, 1932

To Robert F. Ligon, Esq., Clerk of the above-entitled court:

You are hereby requested to make a transcript of the record of this cause to be used on an application to the Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of

1. The record on appeal in said cause, a copy of which we submit herewith.

2. The opinions of the Supreme Court of the State of Alabama, certified copies of which we submit herewith.

3. The stenographic minutes of the testimony taken at the trial, a certified copy of which we submit herewith.

4. All journal entries contained in the record of the proceedings of the Supreme Court of the State of Alabama relating to said cause.

5. The petition for a rehearing, copy of which we submit herewith.

6. The final judgment and decision of the Supreme Court of the State of Alabama.

7. The copy of this præcipe.

8. Your certificate to the record that it is a complete record in said cause.

Dated this 18 day of April, 1932.

Yours, etc., (Signed) G. W. Chamlee, Attorney for Appellants.

[File endorsement omitted.]

[fol. 171] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 31, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is advanced and assigned for argument on Monday, October 10th next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.